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CENTRAL GOVERNMENT OF CHINA, 1912-1928

中國中央政府

Central Government of China
1912-1928

An Institutional Study

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Preface

The governmental systems tried in China during the early period of the Republic, from 1912 to 1928, undoubtedly constitute a unique and significant chapter in the lengthy history of the constitutional development of the Chinese state. These systems are unique because, with few exceptions, their spirit and structure were the results of superficial imitation and hasty adoption of those of the Western democracies. They differed from the traditional Chinese polity (i.e., despotic monarchy or paternal autocracy) and later from the one-party political tutelage system of the Kuomintang. They are significant in that their failure to succeed in China caused many Chinese to lose faith in the idea of a constitutional government, thus inclining them to accept communism as a general panacea for China's problems.

Some literature dealing with traditional Chinese political institutions and the Kuomintang system has been published both in Chinese and English. There has, however, been no systematic description or analysis of the structure and operations of Chinese political institutions during this particular period.

The purpose of this study, therefore, is to present the various forms of governmental structure that were adopted successively from the outbreak of the Revolution on October 10, 1911, to the conclusion of the Kuomintang's "Northern Expedition" in the summer of 1928. The presentation, of course, includes an explanation of how these structures really functioned. This approach makes possible an understanding of the causes underlying the failure of the several political systems. It also permits an evaluation of the various causes contributing to this pattern of failure. A stable democratic government has certain fundamental prerequisites. Without these, performance can never approach concept. These prerequisites include educational background and political ex-

perience on the part of the people concerned, a genuine and powerful public opinion, a healthy party system, the existence of an accepted opposition, absence of the menace of a standing armed force, public spirit and a sense of citizenship, a tradition of rule by law, a desire for self-government on the part of the people, and freedom from foreign intervention.

The scope of this study has certain obvious limitations. The author has concerned himself exclusively with the central government and with only the structure and operations of the central governing body during this particular period. Therefore, political events, such as the warfare among the militarists and the machinations of political parties, have received only incidental attention. Moreover, in discussing the structure and operations of the central governing body, the political aspects of administration have been stressed. There has been no intention to minimize or to ignore either the part played by the militarists and other forces or the importance of the detailed organization and method of operation of the central government. Both have been included insofar as they throw light upon the causes behind the failure of the successive institutions during the period.

Even within this limited scope, the execution of this study was not without difficulties. The central government of China during the period 1912-1928 worked under various basic laws, which provided for various types of institutions. As a consequence, the description and analysis of the government under each system necessitated a sketch of its origin, its attainments, and its ultimate failure. Thus, the dimension of history has been added to that of structural analysis. Admittedly, there is a lack of information concerning the internal functioning of the Chinese government. In Western countries, information of this kind is rarely available until the persons concerned are dead, and constitutional lawyers, therefore, are apt to be at least a generation behind the times. Students of the Chinese government of modern times are even more unfortunate in this regard. No "official" biographies or collections of papers are available long after the death of the statesmen concerned. Chinese statesmen of great eminence appear never to have kept any private records whatsoever of their transactions of public affairs. Perhaps they have realized that the publication of their diaries or records would harm rather than improve their personal reputations. In studying the actual operation of the central government of China, the writer, therefore, has drawn his observations largely from public expressions of the government; his con-

clusions concerning its internal functioning owe much to sound logic.

This study has been beset with difficulties, but it would have been impossible without the courtesy extended by the Library of Congress and the Hoover Institute and Library of Stanford University, including free access to their precious collections of original Chinese materials, such as the Govern-ment Gazette. The writer welcomes this opportunity to express his obligation to the two institutions.

The writer is also deeply indebted to Professors Eugene P. Boardman, Leon D. Epstein, David Fellman, and John S. Thomson of the University of Wisconsin for valuable criticism and encouragement. To Dr. Carsun Chang the author feels very grateful for his reading of the last chapter of the manuscript. Sincere gratitude is also due to Mrs. Shirely Duncan Hudson of the American Council of Learned Societies and Mr. Bayard Lyon of Washington, D.C., for editorial corrections. Finally, the writer wishes to express his appreciation for the aid given by his wife in the preparation of the manuscript.

For any faults or shortcomings the author assumes full responsibility.

Franklin W. Houn

April 15, 1955

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CENTRAL GOVERNMENT OF CHINA, 1912-1928

The Provisional Government of the Republic

THE ESTABLISHMENT OF THE PROVISIONAL GOVERNMENT

The Provisional Government of the Republic of China was established after the outbreak of the Wuchang Revolution on October 10, 1911, which shortly thereafter led to the overthrow of the Manchu Dynasty.¹ It was the first republican form of government that ever existed in China. Hitherto, China had been ruled by despotic monarchs or paternal autocrats. Dynasties came and went without seriously affecting the political system of the country. The theory of the legally unlimited power of the ruler and the concept of the "rule of man" had provided the foundation for the age-old Chinese polity.² With the Revolution the spirit underlying the traditional structure of government was attacked and the framework was destroyed. Thus the Revolution in 1911 was indeed a significant event from the standpoint of Chinese constitutional development.

The Revolution, however, did not come unheralded; it was the product of Western impact and domestic disturbances. Significant Western impact upon China dates back to the Opium War of 1841, which opened the gates of the ancient isolated oriental empire and caused her to enter into conflict with Western powers. The outcome of this conflict was a series of defects. In consequence, various kinds of concessions and privileges were extorted by the Western powers.³ Up to the end of the nineteenth century, China was even in danger of partition and disintegration.

Within the nation, from the time of Emperor Chia Ch'ing on, the Manchu government increasingly showed its unfitness and inability to effectively administer the affairs of the nation. Aside from the fact that Emperor Chia Ch'ing and his successors were men of weak personality and less versed in statecraft than many of their predecessors, the deterioration was also attributable to the defective structure of the government itself. One of the defects was the absence of effective

leadership and a system of individual responsibility within the government as a whole and in many individual agencies as well. At the central level, neither the Grand Secretariat (Nai-ko) nor the Grand Council (Chün-chi Ch'u) was really in a position to act under the Emperor as a supreme co-ordinator and supervisor of the work of the various executive departments or boards.⁴ For one thing, there was not a specifically designated head in either the secretariat or the council. Nor did the grand secretaries and the grand councilors transact their business according to the principle of collegiality. Instead, they usually acted individually. This practice often gave rise to personal rivalry within the respective agencies, thus weakening their position in relation to the Emperor on the one hand and the various executive departments on the other.

Furthermore, the impotence of the Grand Secretariat and the Grand Council as a supreme agency of policy-coördination was also caused by their lack of the power to issue directives in their own name to the various executive departments in the central government and to the viceroys and governors in the provinces.

Not only were the Grand Secretariat and the Grand Council poorly organized and inadequately empowered; the various executive departments also found themselves practically in a similar situation. Each of these executive departments was headed by two ministers, four vice-ministers (shared equally by Manchus and Chinese), and, occasionally, a specially appointed "supervising minister," but none of these officials had any supreme authority in their department. It was provided that whenever ministers and vice-ministers of a department could not agree with each other, they might individually present their views to the Emperor for a final decision. Thus, internal solidarity and administrative efficiency became something unattainable by the departments. Worse still was the fact that the executive departments were denied the means with which they could effectively supervise and direct, within their respective jurisdictions, the administration at the provincial and local levels. For example, they were not given the power to revise, suspend, and annul orders and decisions of the viceroys and governors even if they were in contradiction with their own; such power was reserved exclusively to the Emperor.

To be sure, all these institutional arrangements were originally designed to further strengthen the position of the Manchu monarch at the expense of his ministers and their

agencies. But these same arrangements also made an unprecedented demand on the energy, ability, and wisdom of the monarch. Hence, so long as able and energetic emperors such as K'ang Hsi and Ch'ien Lung were steering the ship of state, the Manchu court functioned well, despite its faulty structure. But once the throne was occupied by men of less political ability, such as Emperor Chia Ch'ing and his successors, confusion and incompetence marked the top leadership of the imperial administration. Meanwhile, the corruption of the civil service system and the prostitution of the civil service examinations debased and deteriorated the entire bureaucratic machinery.

At the provincial level, while no autonomy was legally recognized, the tradition that each governor or viceroy was practically let alone in governing his territory so long as he sent in his apportionment of the imperial revenue and did not openly defy the authority of the Emperor, gradually helped enhance centrifugal tendencies, thus making it very difficult for the central administration to exercise effective control over provincial governments.

With regard to local administration, degeneration also took place at the time when it occurred in the central government. Local officials looked down on the people, kept out of touch with them, and cared less for them. Besides taxing and punishing the people, they did little else to qualify themselves as "parents of the people."

Meanwhile, the mismanagement of finance and the demoralization of the banner garrisons enfeebled the Manchu Dynasty economically and militarily. As a result, civil commotion spread to most parts of China.⁵ Thus internal conditions combined with Western impact to create the necessity for reform and eventually for revolution.

The first attempt at reform was initiated by several patriotic, high-ranking officials, including Tsêng Kuo-fan, Tso Ts'ung-t'ang, and Li Hung-chang, during the period 1862-94. But this reform was limited to the technical field along, because these patriots still had confidence in the traditional Chinese political system; they thought that the sole contribution to China from the Western world was in the area of mechanical techniques.⁶ The inadequacy of reform was revealed by the defeat of China in the Sino-Japanese War of 1894-95. In the following year, several scholars, including K'ang Yu-wei, T'an Shih-t'ung, and Liang Ch'i-ch'ao, and a few officials, among them Yang Shên-hsiu, and Hsü Chih-ching, felt that if China was to remain independent, some changes must be undertaken in the fields of administration, education, industry, and agriculture and in the

armed forces. This movement was sanctioned by the open-minded Emperor Kuang Hsü, and the so-called "Hundred Days" of reform marked the attempt to patch up the governing structure without fundamentally altering it.⁷ Even this superficial reform was, however, nullified by the reactionary elements of the Manchu court under the direction of the Empress Dowager Tz'ü Hsi.⁸

Although the disastrous national crisis caused by the Boxer movement did bring a deeper realization of the need of reform in the hearts of the powerful Empress and other royal members of the Court as it was manifested in an edict issued on January 28, 1901, very few reform measures undertaken during the subsequent four years were designed to change the despotic nature of the Manchu monarchy.⁹ The administration reorganization of certain agencies, the modification of the civil service examinations, and the establishment of a modern educational system were the ones which highlighted the reform programs. The need for a thoroughgoing reform of China's constitutional system was not felt until the conclusion of the Russo-Japanese War of 1904-5.¹⁰ The Chinese public believed that the main reason for Japan's wonderful success was its efficiency in government, which was credited largely to the newly adopted Japanese constitution.

Upon the petition of the so-called "monarchical constitutionalists," who, under the leadership of Liang Ch'i-ch'ao and others, called for a government of constitutional monarchy, and were against revolutionary action, in June, 1905, the Manchu court sent five high-ranking officials abroad to study constitutional government and see how it worked in other nations. Upon their return, the Manchu court announced its intention to establish a constitutional government and subsequently took a series of preparatory measures.¹¹ The first measure was to further reorganize the administrative system. In fact, the changes made amounted either to a mere alteration in the name of a department or to the consolidation of departments under the old or a new name. Although the former dual headship of each department was replaced by a single head, no institution corresponding to the premiership in many Western countries was created to supervise and direct the various departments. An attempt to break the racial barrier by removing the racial qualifications for ministerships and vice-ministerships was also without practical significance, for the new policy actually resulted in the appointment of Manchus to the greater number of important positions, where formerly the court had been obliged by the old usage to balance a Manchu appointment with a Chinese.

A more conspicuous step taken by the Manchu court was the promulgation, in 1908, of the proposed "Principles of Constitution" and a "Nine-Year Program (1908-17) of Preparation."¹² While the former document was essentially a camouflage designed to quell the clamour for a constitutional government, the latter instrument set forth comprehensive plans, which, if carried out, might have resulted in the creation of better conditions in China for the development of a democratic government, if not the creation of a democratic government itself.¹³ In accordance with the programs, each year was to witness certain changes, such as census taking, police reorganization, judicial reform, taxation reform, the extension of modern educational facilities, the introduction of a budget and auditing system, the introduction of local self-government, the preparation of constitutional laws, the establishment of a parliament, and the organization of a privy council and a cabinet.

Prior to the promulgation of the above-mentioned documents, the Manchu court had another set of regulations on governmental reform enacted. These dealt with the organization and convocation of provincial assemblies. But provincial assemblies were not actually convened until 1909. In spite of the fact that their membership was by appointment and their function was purely advisory, these provincial assemblies were able to exert a considerable influence on the politics of the day, especially in checking the attempted assumption of authority by the imperial government over the provincial administration and in the agitation for the early convocation of parliament and the early organization of a responsible cabinet.

Turning our attention back to Peking, on October 3, 1910, a National Assembly (Tzŭ-chêng Yüan) convened for the first time under regulations that had been sanctioned by an imperial edict of October 26, 1909.¹⁴ Besides being substantially similar to the provincial assemblies both in composition and function, the National Assembly also strived to equal its counterparts in the provinces in the agitation for the early establishment of a constitutional government.

With the support of several viceroys and provincial governors, the National Assembly and the provincial assemblies were eventually able to cause the Manchu court to issue an edict on November 4, 1910, promising to convene the Parliament in 1913 instead of four years later.¹⁵ Meanwhile, a modified program of constitutional preparations with a view to shortening the time limit was promised. The edict also

stated that a further reorganization of the administrative system would be undertaken.

On May 8, 1911, the formation of a cabinet was announced. Taking the place of the old advisory bodies, the Cabinet consisted of a premier, two deputy-premiers, and ten ministers. All members of the Cabinet were appointed by the Emperor and were responsible to him, exercising merely what powers the Emperor chose to delegate to them. Nowhere was there any provision that the National Assembly would exercise any control over the Cabinet. Far from being a responsible ministry, the new Cabinet played a role scarcely different from that of the defunct Grand Council and the old executive departments. Nor is this all. The newly organized Cabinet was dominated by imperial clansmen with a prince of blood as Premier. All of these facts led many Chinese to think that the Manchu court was insincere in bringing about a constitutional reform and drove them to regard a revolution as imperative.

The revolutionaries were led by Sun Yat-sen and were organized in 1905 under the name T'ung-mêng Hui (the Alliance Society). Its solemn pledge was, "Oust the Manchus, regenerate China, establish a republic and equalize land-ownership."¹⁶ It is to be noted that the rank and file of the revolutionary party were largely recruited from among overseas Chinese, students studying abroad, and members of several secret societies which had a perennial existence south of the Yangtze. This very fact had significant bearing upon political events after the Revolution. The conversion of members of these groups to the revolutionary cause, in most instances, was due not so much to enlightenment as to discontent with the political status quo. Very few of them had a thorough understanding of the real spirit and method of republicanism and democracy. Indeed, the slogan coming from the southern secret societies was "down with the Manchus, up with the Mings." To them as well as to the masses who had supported or participated in the Revolution, it was essentially an anti-Manchu and anti-dynastic revolt. Once the Manchu Dynasty was gone and a republican form of government was established, they lost control of events.¹⁷

Although revolts had broken out sporadically in the years preceding the Revolution, none of them achieved any success.¹⁸ On the other hand, revolutionary propaganda and infiltration did make headway in the new model army which was stationed in southern China, especially among the troops at Wuchang, Hankow, and Nanking. Thus, when the local gentry in Szechuan

Province organized a movement opposing the Manchu court's railway nationalization project, sanctioned by the Hukwang railway loan contract in 1911, the revolutionary elements in Hankow and Wuchang quickly decided, on their own initiative, to seize this opportunity for revolt.¹⁹

On October 9, 1911, a bomb was exploded at a Chinese house in the Russian concession in Hankow. An investigation showed that the place was the headquarters of a revolutionary group. The police seized several lists containing the names of the ringleaders. This led to the arrest and execution of a number of local revolutionaries. Their comrades in the new model troops at Wuchang, just across the Yangtze, raised the standard of revolt on October 10, and forced their commander, Colonel Li Yüan-hung, who was at the time still loyal to the Manchu court, to assume leadership. Within two days, the rebels had captured the cities of Wuchang, Hankow, and Hanyang.

As the news of the successes in the Triple City spread up and down the Yangtze, fourteen provinces²⁰ and several metropolitan cities such as Nanking and Shanghai immediately followed suit in repudiating the Manchu authority; but this action was always under local leadership and did not imply acceptance of central control. In order to meet the counter-attack of the imperial armies and to deal with foreign powers, the need of coördination among the local revolutionary units was immediately recognized. On November 9, a circular telegram was dispatched by Li Yüan-hung, the Military Governor or Tu-tu of Hupei, asking the various provinces to send delegates to Wuchang to organize a provisional central government. Meanwhile, Shanghai lost no time in claiming a voice in the control of the revolutionary movement. On November 11, the military governors of Kiangsu and Chekiang, Ch'êng Tê-ch'üan and T'ang Shou-ch'ien, jointly wired Ch'ên Ch'i-mei, Military Governor of Shanghai, proposing that a constitutional conference be held in a central location such as Shanghai. They further suggested the procedures of convening the conference: (1) each provincial assembly, a body which had been established previously by the Manchu court in the years 1907-09, should send one delegate; (2) the military governor in each province should also send one delegate; (3) the building of the Educational Society of Kiangsu in Shanghai should be used as the headquarters of the delegation; and (4) as soon as delegates from more than two provinces reached Shanghai, the conference should open its meeting; those subsequently coming to Shanghai should join the conference at once.²¹

On the following day, the personal representatives of these two military governors again invited, by telegram, the various provinces to send delegates to Shanghai, and asked them to recognize Wu T'ing-fang and Wên Tsung-yao as provincial representatives of the republican forces in charge of diplomatic affairs. After delegates from more than two provinces had arrived in Shanghai, the constituent conference held its first meeting on November 15 and styled itself "Conference of the Representatives of the Military Governors of the Provinces." The pretensions of the revolutionaries in Shanghai soon brought them into conflict with those in Wuchang. On November 20, the conference, while insisting that it should remain at Shanghai, made a temporary concession, recognizing Wuchang as the seat of the "Central Military Government of the Republic" and the Military Governor of Hupei, General Li Yüan-hung, as its head.²² This failed to appease the men in Wuchang. On November 23, General Li Yüan-hung's representatives, Chü Chêng and Ts'o Fêng-chi, arrived in Shanghai and told the conference that General Li still wished the delegates to go to Wuchang to establish a provisional government there. Thus on November 24 the conference reluctantly decided to move its seat to Wuchang.

While the delegates to the conference were en route from Shanghai, the city of Hanyang was retaken by the imperial forces, thereby placing Wuchang in a precarious position. As a consequence, the conference held its meetings in the British Concession in Hankow. On December 2, it commissioned Lei Fên, Ma Chün-wu, and Wang Chêng-t'ing to draft a general plan for the organization of the Provisional Government. On the following day, the three men completed a charter containing twenty-one articles, which was immediately adopted and promulgated by the conference, with the endorsement of delegates from ten provinces.²³

On December 4, just one day after the promulgation of this document, the conference learned that Nanking had fallen into the hands of the revolutionary forces. It decided that it should be the seat of the Provisional Government. Although the delegates immediately proceeded to Nanking, they found that no agreement could be reached among themselves as to who should be the head of the proposed government.²⁴ Sun Yat-sen, who had been in Denver, Colorado, when the Wuchang Revolution took place, returned to China at this moment. On December 29,²⁵ the conference, therefore, elected him Provisional President by a vote of sixteen out of seventeen. He took office on the first day of January, 1912. Two days later,

the Congress elected General Li Yüan-hung Vice-President. Meanwhile, with the consent of the conference, President Sun Yat-sen appointed Huang Hsing and eight others as heads of the various departments. The so-called "Provisional Government of the Republic" was thereby established.

THE FUNDAMENTAL CHARACTERISTICS OF THE GENERAL PLAN FOR THE ORGANIZATION OF THE PROVISIONAL GOVERNMENT

Since the Provisional Government of the Republic was based upon a general plan promulgated by the Conference of the Representatives of the Military Governors on December 3, 1911, it is desirable for us first to note the fundamental characteristics of this plan before examining the structure and operation of the government itself. Although the General Plan for the Organization of the Provisional Government was amended twice shortly after its enactment,²⁶ its main features never changed. They may be summarized as follows:

First, the General Plan provided for a republican government which did not accord with the plans for revolution and reconstruction in China previously contemplated by the T'ung-mêng Hui.²⁷ According to the political program of the T'ung-mêng Hui, revolution against the Manchu court must be a three-stage operation. The first stage was to be the stage of "military rule." During this stage, a military government was to rule the country for at least three years in order to secure the complete liquidation of all anti-revolutionaries and reactionaries. The second stage was to be the "political tutelage period," during which the military government was to exercise trusteeship²⁸ on behalf of the people, thus guiding them in the practice of self-government in the districts and provinces in preparation for the third period, the constitutional stage. When the country had graduated into this stage, the people would elect their representatives to the National Assembly, which, in turn, would adopt a constitution for the nation and organize a government as provided by it.

The provisions of the General Plan concerning the organization and powers of the provisional government and the convocation of a National Assembly in order to discuss and decide upon a permanent constitution within six months from the establishment of the Provisional Government, led to the conclusion that the framers of this document did not intend to set up a strong military government while the imperial forces yet remained to be totally defeated. Nor did they recognize the necessity of having a preparatory stage in insti-

tuting a constitutional government, although the Chinese did not yet understand that institution. The fact that the revolutionaries ignored their well-designed procedures of revolution and reconstruction as soon as the Revolution took place indicated the likelihood of uncertainty as to the future of the Revolution. Indeed, this was to be shortly verified by subsequent events.

Secondly, the General Plan actually resulted in a government for the Republic more or less federal in nature. This result was achieved not so much through express provisions concerning the division of powers between the central and local governments²⁹ as through its stipulations with respect to the composition and functions of the legislature, known as the National Council (Ts'an-i Yüan).

According to Article II of the General Plan, which will be examined later in more detail, the National Council was given the general legislative power and powers to supervise the executive branch of government. The council was to be composed of representatives sent by the various provinces, with each province having the right to send three members chosen by whatever method is wished. Size of territory and population made no difference. This, as some students of Chinese government have indicated, made the Provisional Government something like a federal one.³⁰ In fact, immediately after the outbreak of the Revolution some circles did express a desire for a federation instead of a unitary state. Partly influenced by this current of thought and partly because of the awareness that no other satisfactory scheme could be possibly adopted under the circumstances, the framers of the General Plan based the new regime on provincial units instead of directly upon the people. This resulted in provincial autonomy after the Revolution, a status which was never effectively altered throughout the early years of the Republic. This situation had a tremendous effect upon the authority of the central government in particular and the political history of the Republic in general.

Thirdly, the General Plan stipulated a presidential form of government for the Republic. The Provisional President's position under the General Plan it will be shown later, was so important that it paralleled the position of the president of the United States under the American Constitution. He was actually given the power to govern the country. Although, in exercising some of his powers, he had to secure the consent of the National Council, he was not, theoretically speaking, responsible to that body.

THE PROVISIONAL PRESIDENT

The Election of the Provisional President

Since the Provisional President was the head of the newly created government, a description of that government must begin with him. According to the General Plan for the Organization of the Provisional Government, he and the Vice-President were to be elected by the Conference of the Representatives of the Military Governors of the Provinces. The one who received two-thirds of the total number of votes cast should be elected. In the election, each province would have one vote.³¹ As the requirement of a two-thirds majority of the total number of votes cast was stipulated in the General Plan after the Presidential Election had actually taken place, the election of Sun Yat-sen on December 29, 1911, by the Conference was then not subject to this rule, although his election by a vote of sixteen out of seventeen had, in fact, fulfilled that requirement.

The Powers and Functions of the Provisional President

The Provisional President was given the general power "to govern the country,"³² in addition to several specific powers expressly provided for in the General Plan. Although some powers usually given to a head of state or chief executive were not provided for, the General Plan may be construed as having given these powers to the President by implication. For example, the power or function of representing the Republic in relations with foreign countries was such an implied power. The powers which had been specifically given to the President under the General Plan were as follows:

Administrative Powers.—The Provisional President was to be the head of the central administration of the Republic. He might appoint and remove all civil and military officials and ordain and establish an administrative system and official regulations. In the appointment of the ministers of the various departments and of diplomatic officers, and in the establishment of an administrative system and of official regulations, the consent of the National Council was required.³³ Since the Provisional Government existed for only three months, the power of appointment was not extensively exercised. In appointing the ministers of the various departments, it proved to be the case that the consent of the Conference of the Representatives of the Military Governors of the Provinces, which was temporarily acting in the place of the National Council, was not to be taken for granted,³⁴ in spite of the fact

that the majority of the members were the political followers of the President. The Provisional President was also given the power, or duty, to direct the various departments in the execution of laws and other matters, which had been passed by the National Council.³⁵ In this capacity, it was theoretically possible for him to play the role of coördinator for the various departments. Thus the presidency was not only political but also administrative in nature.

Legislative Powers.—The Provisional President did not have the power to legislate but had the power to assist and influence the legislative body. For instance, while the General Plan gave the President the power to establish, with the consent of the National Council, an administrative system and official regulations, it apparently also gave him the power to submit law bills on these matters to the same council. Thus the Provisional President had the power to initiate legislation. As a matter of fact, Sun Yat-sen was never, during his three months in office, reluctant to make recommendations for the consideration of the legislature.³⁶ In many cases, he and the heads of the various departments even appeared personally on the floor of the legislature for this and other purposes.³⁷ He was also expressly given "suspensive" veto power by the General Plan. Consequently, whenever the legislature passed a measure which he disliked, he might, within ten days after he received such a measure, return it with stated reasons to the legislature for reconsideration. Unless the same measure was again passed by a two-thirds vote of the legislature, the President had no obligation to promulgate or execute it.³⁸ Thus he not only had the power to initiate legislation which he felt to be necessary, but also had the power to prevent certain legislation which he deemed to be bad. Indeed, when the National Council, on February 14, 1912, passed a resolution to the effect that the capital of the nation should be Peking, the Provisional President immediately returned the measure to the Council for reconsideration. Since the Council failed to override his veto, he successfully prevented this measure, which he disliked, from passing.³⁹

Military Powers.—The Provisional President was the Commander-in-Chief of the army and navy of the Republic.⁴⁰ Since the Manchu court still had the loyalty of most of the imperial forces under the command of Yüan Shih-k'ai at the time when the Provisional Government was operating in Nanking, the latter found that its military orders and regulations were obeyed only in the revolutionary units. Moreover, although the leaders of these army units in the different localities

originally had achieved their position through the voluntary support of the rank and file, this support could not continue indefinitely if troops were not paid. Since the Provisional Government was actually not in a position to finance them, the Provisional President's control over them was nominal rather than real.

Diplomatic Powers.—The Provisional President was given the power, with the concurrence of the National Council, to declare war, make peace, and conclude treaties.⁴¹ At the time these powers were apparently impossible to use because the Imperial Government was then still functioning at Peking de jure and was internationally recognized. As a matter of fact, when the Minister for Foreign Affairs of the Provisional Government served a notice on the powers calling for their recognition of the newly established Republic, the Powers simply ignored the request.⁴²

Power to Establish a Provisional Central Court.—The Provisional President was finally given the power, with the consent of the National Council, to set up a Provisional Central Court.⁴³ Since the provision in the General Plan was permissive and not mandatory in nature, the court was apparently never established during the short time the Provisional Government existed in Nanking.⁴⁴

The Staff Offices of the Provisional President

As it had been customary in China for a chief executive almost always to be well staffed, at least in terms of persons and offices, the Provisional President had certain agencies under his direct control. The most important one was the secretariat of the President's Office. Under the supervision and control of the Secretary-General, the secretariat's seven sections assisted the President in discharging his duties. The other agencies were the bureaus of legal affairs, printing and engraving, the government gazette, and the military staff.⁴⁵

THE NATIONAL COUNCIL

The Composition of the National Council

The composition of the National Council was basically similar to that of the Conference of the Representatives of the Military Governors of the Provinces, which had acted in its place until January 28, 1912, when the council itself was constituted. It was composed of members sent by the military governments in the provinces, with each province having the right to depute three members.⁴⁶ During the meetings of the

council each member could cast one vote. Since the electoral methods were left to the provinces for decision, three different procedures were actually adopted: (1) appointment by the military governors; (2) election by the provincial assemblies, which had been established by the Manchu court; and (3) election by the people. When the Council was formally convened on January 28, 1912, only ten provinces sent representatives chosen by one or another of these three methods. Seven other provinces appointed acting delegates. Sinkiang, Tibet, Inner and Outer Mongolia, and Chinghai sent no delegates at all.

Most of the members of the Council were politically affiliated with the T'ung-mêng Hui. But this is not to say that the Council was a homogeneous body so far as practical politics was concerned. Localism and personal asperity caused the appearance of many tiny political factions both within and without the T'ung-mêng Hui membership.⁴⁷ Thus some provincial assemblies bitterly denounced, for a while, the activities of the Council and attributed its shortcomings to the fact that most of its members had been appointed by the military governors instead of by popular election.⁴⁸ But the writer is not at the present moment concerned with the merits of this denouncement. What impresses him deeply is the fact that the lack of healthy political parties proved to be one of the main hindrances to the smooth working of democratic institutions in China from the very time when that kind of institution was first introduced.

The Council had a speaker presiding over its meetings. He was elected by the members of the Council by means of signed ballots, and those who received the majority vote were elected.⁴⁹ Issues in the Council were to be decided by vote of more than half of the total number, except in the case of bills concerning declaration of war, concluding treaties, and overriding the President's veto.⁵⁰ Since the General Plan was hurriedly drafted and was intended to serve as a temporary fundamental law, it was silent, on other matters concerning the Council, such as the privileges and immunities of the Council members. But the Council was authorized to make its own procedures.⁵¹

The Powers and Functions of the National Council

The National Council had, roughly speaking, the powers and functions of the legislative branch of government in the Western states. They may be classified as follows:

Legislative Powers.—The Council was authorized to make provisional laws for the Republic.⁵² Since the Council existed at Nanking only for two months, it enacted no laws on civil,

criminal, or commercial matters. On April 3, 1912, a resolution was passed by the Council stating that all the Imperial laws which were not in conflict with the republican form of state should be temporarily applicable to the Republic.⁵³

Financial Powers.—The Council was to pass upon the budget, to audit the expenditures, to make uniform national taxation laws, and to set up a monetary system and regulations concerning public debt.⁵⁴ These powers were also nominal rather than real. In the first place, the Provisional Government was obviously not in a position to adopt any budget so long as no estimates of revenues and expenditures could be made. In the second place, the semi-independent position of the various provinces, which had repudiated the imperial authority, made it impossible for the Provisional Government to establish a uniform national taxation and monetary system.⁵⁵ This phenomenon was natural at the time, if we recall that the Revolution had then not yet been completed even in the military sense. What amazes us is the fact that throughout the early period of the Republic the same situation of financial disorder was never effectively checked. In one respect, however, the Council had made considerable use of its power in financial control. This was in connection with the conclusion of loan contracts by the government. It is true that even in this matter, the Council was not infrequently asked only to recognize what had already been accomplished;⁵⁶ it did, however, assert its power as vehemently as the circumstances permitted.

Power to Ratify Appointment of Officials.—Ratification by the Council of appointment of officials was required only in the case of ministers of the various departments and diplomatic envoys.⁵⁷ The Council did not have the power to hold these officials responsible to itself by virtue of this ratification. In spite of this fact, influence with appointees appears to have been considerable.⁵⁸

Diplomatic Powers.—The Council's diplomatic powers included ratifying declarations of war, making peace, and concluding treaties, as initiated by the Provisional President.⁵⁹ As indicated above, the Provisional Government was never internationally recognized, so that the exercise of the diplomatic powers either by the executive or by the legislative branch of government never took place.

Advisory Powers.—The Council was empowered to give advice to the Provisional President when the latter asked for it.⁶⁰ The General Plan did not define the nature and scope of such advice. Presumably, political matters were not only within the coverage but were the most important subjects.

What is dubious is whether the Provisional President had the obligation to accept advice if it was given. No legal interpretation or practical cases can be cited for verification one way or the other.

Besides exercising these powers, the Council could decide upon anything which the Provisional President submitted for decision.⁶¹ It was in this field that the Council rendered, for good or for ill, its great services to the Republic. Notable examples were the enactments of the Articles on the Favorable Treatment of the Manchu Court after Abdication and the resolution that the nation's capital was to be moved to Peking.⁶²

THE DEPARTMENTS

According to the original version of the General Plan, five departments were to be established under the Provisional President.⁶³ As soon as the Provisional President began to organize the government, these departments were found inadequate to accommodate all eminent political figures. Thus on January 2, 1912, the Conference of the Representatives of the Military Governors amended the General Plan to the effect that it provided no fixed number of departments, but stated merely that each department should be headed by a minister, who was to assist the Provisional President in the discharge of the duties of the various departments.⁶⁴ In accordance with this provision, the Provisional President submitted to the conference, on the next day, his draft bill on "the Organization and Powers of the Departments of the Central Administration." The Conference immediately passed this bill. It stipulated nine departments in charge of army, navy, foreign affairs, justice, finance, interior, education, industry and communications, respectively.

As was pointed out earlier, the ministers were appointed by the Provisional President with the consent of the Conference of Representatives of the Military Governors. They, like the heads of the various departments of the United States, were subordinates of the President. In the matter of policy-making, the President might consult them, but he was not bound to do so. They were responsible to him exclusively and were removable at his will. For a while, the framers of the General Plan intended to require the countersignature of the ministers on every measure issued by the President.⁶⁵ But that scheme was soon discarded. Consequently, the ministers' function theoretically was administrative rather than political in nature. But in practice the Provisional President frequently made

use of the advice of his ministers on policy-making through the device of the so-called "Council of States," which consisted of the President and the ministers of the departments.

From the standpoint of political affiliation, President Sun Yat-sen did not exclusively appoint members of T'ung-mêng Hui to the posts of the various departmental heads. Three of the nine ministers in the Provisional Government were famous leaders of the former "monarchical constitutionalists," who soon formed the T'ung-i Tang (The United Party).⁶⁶ And another one was a professional soldier.⁶⁷ The participation of these non-T'ung-mêng Hui members in the government was significant for two reasons. First, it indicated that the Provisional Government of the Republic at Nanking was not entirely conducted by the revolutionaries as has been usually supposed. Secondly, it showed, to some degree, the traditional readiness of Chinese politicians and intellectuals to sacrifice principles for practical considerations whenever their political fortune is at stake.⁶⁸ As will be seen later, this feature had a great deal to do with the failure to set up and maintain a democratic government in China.

As for the internal organization of the departments, no law or regulation was ever passed while the General Plan was effective. Apart from a deputy minister in each department who was to assist the minister in discharge of departmental affairs and in supervision of the lower officials,⁶⁹ The subdivisions of these departments may be seen only from the lists of officials of the various departments at the time.⁷⁰ Generally speaking, each department had, besides a secretariat, two to seven bureaus or divisions.

From the general structural standpoint, the portrait of the Provisional Government of the Republic is now complete. Before proceeding to survey the Central Government, which was set up about three months after the Provisional Government came into existence, a summary may be useful. First, it has been shown that the Provisional Government of the Republic was set up after the Wuchang Revolution broke out. The Revolution had been the result of the unwillingness and incompetence on the part of the Manchu court to reform itself in order to cope with the external and domestic situations created by Western impact and internal disturbances since the middle period of the Manchu Dynasty. Secondly, the Provisional Government was presidential in form, with a National Council acting as legislature. Thirdly, the foundation of the Provisional Government was more or less based upon the military govern-

ments of the various provinces, which had repudiated the Manchu authority, instead of directly upon the people. And finally, since it was provisional in nature, its organization and authority were designed with scant attention to detail and were exercised in form only.

Government under the Provisional Constitution

THE ESTABLISHMENT AND CHARACTERISTICS OF THE GOVERNMENT UNDER THE PROVISIONAL CONSTITUTION

As had been noted, the revolutionaries had set up a regime in Nanking according to the "General Plan for the Organization of the Provisional Government of the Republic" while the imperial court was still functioning in Peking. As a consequence, no central authority possessing the allegiance of the whole country was to be found in China for several months after the outbreak of the Revolution. It was only with the establishment of a new government in Peking, in accordance with the so-called Provisional Constitution in the spring of 1912, that this situation came to an end. The new government came into existence as the result of a compromise between the revolutionaries and the imperial forces, while the latter were headed by Yüan Shih-k'ai. Thus, a brief review of the events leading to this compromise is profitable as a setting for discussion of the nature, structure, and operation of the government itself.

On October 14, 1911, the Manchu court, being thoroughly alarmed by the unexpected revolutionary uprising in Wuchang, decided that a man of strength and ability was urgently needed to cope with the situation. Consequently, a court edict was immediately issued by the Regent, Prince Tsai-li,¹ appointing Yüan Shih-k'ai Viceroy of Hupei and Hunan and ordering him to proceed at once to the front to quell the insurrection.² At this time, Yüan Shih-k'ai, the creator of the new model army and a man with a reputation for severity, for accepting responsibility, and for a rare ability to turn even disaster to his own advantage, was still living in the retirement to which he had been summarily banished by the Regent on January 2, 1909.³ He showed no anxiety to return to power without a clear understanding regarding his relations with the Peking court. His demand was for a practically free hand in dealing

with the revolutionaries. His terms were accepted in an edict of October 27, which conferred on him what was substantially a military dictatorship.⁴ He was placed in command of all the imperial forces and immediately assumed direction of military operations in the Yangtze valley. On November 8, he was elected Premier by the National Assembly⁵ and returned to Peking to take charge of the whole government.

It is to be noted that from the day when Yüan Shih-k'ai emerged from his enforced retirement to assume the chief command of the operations in the Yangtze valley his attitude and aim appear to have been as one writer once said, "... to deliberately follow the policy of holding back and delaying everything until the very incapacity marking both sides, the revolutionaries quite as much as the Manchus, forced him, as man of action and man of diplomacy, to be acclaimed the sole mediator and saviour of the nation."⁶ Thus, though for a while he prosecuted the military campaign with vigor in order to limit the demands of the revolutionaries, he did not follow up the advantages which he won in the fighting around Hankow so as to crush the revolution entirely when that was deemed at the time perfectly possible.⁷ By withholding decisive action against the revolutionaries, he had a tangible argument with which to force the Manchus to accept whatever plans he might suggest.

The negotiations between the imperial and revolutionary delegates from late November of 1911 to the middle of February, 1912, when the Manchu Emperor abdicated his throne, were conducted precisely in such a way as finally to serve Yüan's personal purposes. Since space forbids a detailed survey of these negotiations, it may be said that the revolutionaries made the abdication of the Manchu monarch and the acceptance of the Republic their primary demand from the time that the negotiations were started. In the circumstances, had Yüan been really loyal to the Manchu court, it was his duty either to deal his final blow against the enemy when his troops were gaining one success after another before the end of 1911 or to resign the post as Prime Minister and go back to retirement. He did neither. In a thoroughly characteristic manner, he allowed the negotiations to be carried on until the necessity for a settlement became increasingly apparent to both sides. Both the imperialists and the revolutionaries were growing weaker financially day by day as the negotiations continued.⁸ Thus, after having vaguely advocated a national convention to settle the problem of the form of the state, he tacitly accepted the offer of Sun Yat-sen to take over the presidency if he

would support the cause of the Republic after the abdication of the Manchu Dynasty.⁹

There was no doubt of the final outcome. On January 28, 1912, a memorial advising the abdication was telegraphed from the front to Peking by Yüan's close lieutenants. Yüan, therefore, successfully induced the court to believe that abdication with favorable treatment was the only course open to the dynasty if the country was to be saved from disruption and the imperial family was to retain financial and ceremonial privileges.¹⁰ Since the terms of settlement had been agreed upon, a series of abdication edicts was issued on February 12, 1912.¹¹ By the terms of one of the edicts the Emperor, however, transferred the responsibility for the organization of China as a republic to Yüan Shih-k'ai rather than to the Provisional Government in Nanking. The edict says:¹²

Yüan Shih-k'ai was elected by the Tzŭ-chêng Yüan to be the Premier. During this period of the transfer of the government from the old to the new, there should be some means of uniting the South and the North. Let Yüan Shih-k'ai organize with full powers a provisional republican government and confer with the Republican Army as to methods of union, thus assuring peace to the people and tranquility to the Empire, and forming the one Great Republic of China by the union as heretofore of the five peoples, namely, Manchus, Chinese, Mongols, Mohammedans, and Tibetans together with their territory in its integrity.

Indeed, the manner in which the Manchu Dynasty gave way to the Republic was not important as long as the Republic was established. But Yüan Shih-k'ai was greatly strengthened in the eyes of his countrymen by the wording of this edict. Sun Yat-sen, for the Provisional Government in Nanking, objected to this part of the edict on the grounds that the republican government could not be organized by any authority conferred by the Ch'ing Emperor. The exercise of such pretentious power would surely lead to serious trouble. Yüan, however, assured Sun that he did not intend to take advantage of the wording of the edicts, and the revolutionaries accepted his assurances.¹³ The wording was not changed and the "serious trouble" which Sun Yat-sen predicted came in due course.

The understanding was that upon the abdication of the Manchu Dynasty Sun Yat-sen should resign from the presidency in favor of Yüan, provided he had first given his unconditional promise of support to the Republic. This Yüan did in reporting the abdication to the Nanking Government. He stated:¹⁴

A Republic is the best form of government. The whole world admits this. That in one leap we have passed from autocracy to republicanism is really the outcome of the many years of strenuous efforts exerted by all of you, and is the greatest blessing to the people. The Ch'ing Emperor has proclaimed his abdication by edict countersigned by myself. The day of the promulgation of this edict shall be the end of the Imperial rule and the inauguration of the Republic. Henceforth we shall exert our utmost strength to move forward in progress until we reach perfection. Henceforth, for ever, we shall not allow a monarchical government in our country.

On February 14, Sun Yat-sen submitted his resignation from the provisional presidency, and at the same time the National Council in Nanking, upon Sun's advice, elected Yüan Shih-k'ai as the Provisional President of the Republic of re-united China.

One of the conditions of Yüan Shih-k'ai's election was that the seat of government should be in Nanking instead of in Peking.¹⁵ This would permit a closer control over the government by the revolutionaries, whose stronghold was in the South, than would be possible if Peking remained the capital city. Since Yüan was reluctant to leave the North, where he had complete political and military control, a deputation was sent to Peking to persuade him. A very opportune mutiny, generally believed to have been inspired by Yüan himself, took place in Peking and weight was given to Yüan's contention that it was unsafe for him to go south.¹⁶ As a result, the revolutionaries in Nanking were forced to absolve him from his promise,¹⁷ and his inauguration took place on March 10 in Peking.

On the same day on which Yüan Shih-k'ai was inaugurated, the Provisional Constitution was adopted by the National Council in Nanking.¹⁸ The drafting of this instrument had been started almost one month earlier, however, and, the necessity for its drafting had been recognized much before that time. As soon as the Provisional Government of the Republic had been established in Nanking, the defects of the General Plan, which was its fundamental law, became immediately evident. There were the technical inconsistencies throughout the text, and, in addition, it was silent on the matter of the people's rights and duties. Moreover, the stipulation that six months from the establishment of the Provisional Government a "People's Convention" would convene was apparently im-

possible of accomplishment. Thus many people sought to have it amended at an early date. But the task was not taken up by the National Council until the middle of February, when a new political situation demanded similar action. The new situation was created by the expectation that the Manchu court would soon abdicate and that Yüan Shih-k'ai would have to be given the presidency of the Republic. The revolutionaries did not trust Yüan's attitude toward the Republic, but they were not prepared to fight to secure his elimination. The easiest way to prevent him from future wrongdoing was, they thought, to make a new constitution under which the presidency should be relegated to a post of dignity from which all real powers were stripped. Thus the Council began to formulate the Provisional Constitution which was completed almost simultaneously with the inauguration of Yüan as president. Therefore, when Yüan took over the office the Provisional Constitution replaced the General Plan as the nation's fundamental law.

In pursuance of this constitution, Yüan Shih-k'ai proceeded to organize an administration. He nominated as Premier T'ang Shao-i, who had represented him in the negotiations with the revolutionaries and was now a convert to the T'ung-mêng Hui. The National Council in Nanking immediately approved his appointment. On March 25, the appointment of ten other members of T'ang's Cabinet was also approved by the same organ. Early in April, the Council formally resolved that the Government of the Republic should be moved to Peking.¹⁹ It was, then, in Peking that the Government of reunited China recruited its rank and file of officers from the old imperial bureaucrats and thereby completed its formation.

Thus, it is clear that the establishment of the Government under the Provisional Constitution in Peking was a compromise. It revealed the inability of the revolutionaries to control events after the outbreak of the Wuchang Revolution. It showed the continuance of the political, military, and personal influences of the old regime. And it also indicated the deficient foundation upon which the government was established.

Before going on to a portrait of the new government, let us review briefly the fundamental characteristics of the Provisional Constitution, which served as its organic law. This may be best done by comparing it with the General Plan. It differs from the latter mainly at two points, the first being that it largely adopted the ministerial system of responsibility while the General Plan used the presidential system.²⁰ The aim of the National Council in writing ministerial responsibility into the Provisional Constitution which it framed,

was, as has been pointed out, primarily to prevent Yüan Shih-k'ai from usurping constitutional powers while he was occupying the presidency. Secondly, the Provisional Constitution included a bill of rights of the citizens which was not found in the General Plan. Stipulations for freedom of speech, of the press, and of public meeting, together with provisions for the security of property and freedom of persons from punishment, were incorporated in this section.²¹ These rights were not, however, absolute; they could be limited or modified by law when necessary for the promotion of public welfare, for the maintenance of public order, or for extraordinary exigencies.²²

It may also be said that no constitution or any equivalent instrument lasted so long and had so much bearing upon the politics of the Republic in its early period as did the Provisional Constitution. It was in force from March, 1912, to November, 1913, when it was replaced by the so-called "Constitutional Compact." But within less than two years it was revived, and it continued in operation, though sometimes only nominally, until the promulgation of the so-called Ts'ao K'un Constitution in the fall of 1923. For convenience of presentation, we shall treat the government under its two phases separately.

THE PROVISIONAL PRESIDENT

The Election of the Provisional President

No regular President held office in China under the Provisional Constitution until the instrument itself was about to be suspended for the first time in the fall of 1913.²³ The presidency remained provisional in nature as it had been under the General Plan. By Article 29 of the Provisional Constitution, it was provided that the Provisional President and Vice-President should be elected by the National Council, by vote of two-thirds of the members present at a sitting of the Council consisting of over three-fourths of the total members. Since the election of Yüan Shih-k'ai by the National Council at Nanking as the Provisional President took place almost one month earlier than the promulgation of the Provisional Constitution,²⁴ this electoral procedure was not applied to Yüan's election. Yüan's election was apparently based upon the provisions stipulated in the General Plan. As has been indicated, it was entirely a matter of expediency. The unanimous vote which he got in the National Council did not mean that he was popular either in the eyes of the members of the Council or

of the masses. This fact foredoomed the failure of the government under the Provisional Constitution, since its system was designed according to democratic principles and not machiavellianism.

The Powers and Functions of the Provisional President

In outlining the fundamental characteristics of the Provisional Constitution, mention has been made of the fact that the government stipulated by that instrument was one of ministerial responsibility in form. Thus one might easily be led to think that, while the Provisional Constitution was in force, the Provisional President was only a titular head of the state. He might have been given a great variety of powers, but practically he would have been unable to exercise them. He would have had to confine himself to taking the advice of his Prime Minister, tendered with the assent and backing of a Cabinet; and he would have had to act upon the advice so tendered. He might have been a cipher who acted everywhere, in the formal sense of action, but who nowhere would have had the power of decision. Being such a person, he might also have stood immune from criticism, from challenge, and from partisan dispute. Responsibility, criticism, and challenge would all have been transferred to his Prime Minister or to members of a Cabinet. But in reality none of these assumptions holds true. Several factors set at naught the original objectives of the framers of the Provisional Constitution, thus putting the Provisional President in a position not only of influence but also of authority. First, the ambiguous provisions of the Provisional Constitution concerning the relationship between the Provisional President and the Premier made it possible for the former to lay claim to the exercise of real powers. As has been pointed out by many critics, while, on the one hand, it was provided that members of the Cabinet countersign all bills introduced by the Provisional President and all laws and orders issued by him,²⁵ and that the appointment of the members of the Cabinet should be confirmed by the legislature,²⁶ so that a responsible cabinet system could be preserved, it was also, on the other hand, stipulated that "Members of the Cabinet shall assist the Provisional President in assuming responsibilities."²⁷ The wording of this last provision was confusing; and no one could say with exactness what was meant by the word "assist."²⁸ In "assisting" the Provisional President, were the members of the Cabinet thereby authorized to make final decisions in all matters, and were they thus held exclusively responsible to the legis-

lature for the decisions which they made? Or were they merely subordinates of the Provisional President with whom they shared some of his responsibilities? No matter what the case might be, the incumbent Provisional President had never allowed himself to be merely a figurehead of the state and aspired to as much power as he could possibly obtain. The struggle for power between the President and the Cabinet was undoubtedly the result not only of personal rivalries but also of this defective provision in the Provisional Constitution.

Secondly, the Provisional President at the time happened to be a man of strong personality who had tremendous political and military influence. This circumstance made the office what it had not been designed to be. The device of the revolutionaries to legislate Yüan Shih-k'ai, the ablest defender of the status quo, out of his control of the situation was therefore a failure.

And finally, the absence of the support of the Cabinet or the Premier by a majority of the legislature further weakened or even incapacitated the same authorities in any efforts to compete with the President for control of the government.

To illustrate the Provisional President's influence and authority in various matters, we might enumerate the powers which had been nominally vested in him by the Provisional Constitution and see how far these powers were actually exercised by him or in accordance with his wishes; and how far action was controlled by the legislature.

Powers Concerning Legislation.—While the Provisional Constitution vested the legislative power in the National Council, it also conferred upon the Provisional President certain powers concerning legislation. These powers may be roughly classified into two categories: the power to introduce bills in the National Council, and the power to ask the same body to reconsider bills which it had passed.²⁹ Since the Premier or members of the Cabinet were required to countersign all public acts of the Provisional President and since the Cabinet and the various departments conducted the business of the government, it might be assumed that these powers could be legally and practically exercised by the latter bodies in the name of the President. But exactly the opposite was true. Yüan Shih-k'ai never simply lent his name and signature to documents prepared by other officials of the government. He was constantly asked for instructions and regularly informed about all matters of importance. Sometimes bills intended for the action of the legislature were even drafted by his own immediate staff. In defending a bill in the legislature, the

ministers or their deputies also frequently tried to increase the weight of their arguments by saying that such and such a bill had been endorsed by the President. These claims appeared to be without effect, since the legislature, either the National Council or later the Parliament, was always hostile to the incumbent President. In comparing the relative authority of the President, Cabinet, and the various departments in the proposal of legislation, this small detail shows the President's prestige in the eyes of the Cabinet members.

The power to introduce bills in the legislature did not, as will be mentioned later, belong exclusively to the President or the officials acting in his name. Members of the legislature also had the right to initiate legislation. Moreover, the fact that the President did not have the power to convoke, open, nor adjourn the meetings of the legislature further diminished his influence and control over legislation.

The Provisional Constitution provided that if the Provisional President disliked a bill passed by the legislature, he could, within ten days after he received such bill, return it, with a statement of his reasons, for reconsideration; if the bill should thereafter be passed by a two-thirds majority of the legislature, he would be obliged to promulgate and execute it.³⁰ This provision has been deemed by many as inconsistent with the spirit of a Cabinet government, which the framers of the Provisional Constitution were supposed to establish.³¹ It has been argued that under a Cabinet government the Cabinet is bound to carry out the wishes of the majority of the legislature. So long as the Cabinet can command the loyalty of that majority, it will be able to enact all laws which it considers necessary and prevent those which it dislikes. Thus, no veto power is needed. On the other hand, if a Cabinet has lost the support of the majority of the legislature, it should resign and should not ask the head of the state to help it prevent objectionable legislation by vetoing. The use of veto power under these circumstances would mean that a Cabinet may defy the will of the majority of the legislature merely through enlisting the help of a minority of the latter in upholding its veto (under the Provisional Constitution one-third of the quorum of the legislature might uphold a Presidential veto).

Administrative Powers.—Nominally, the Provisional President was at the head of the executive branch of the central government. As the source of all executive powers,³² he might issue or cause to be issued orders for the execution of laws and of powers delegated to him by the laws;³³ he might ordain

and establish the administrative system and official regulations with the approval of the legislature;³⁴ and he also might appoint and remove civil and military officials, except that in the appointment of members of the Cabinet, ambassadors, and ministers he must have the concurrence of the legislature.³⁵

In practice, the Provisional President, either on his own initiative or upon the advice of the ministers, issued or caused to be issued various executive orders, and the orders were issued not only for the execution of laws and the exercise of delegated powers but for regulation of various matters which neither the President nor the Cabinet had obtained from the legislature any formal authority to regulate.

In establishing the administrative system and official regulations, the Provisional President apparently had no difficulty in obtaining the consent of the legislature. As a matter of fact, while the National Council was acting as the legislature, its main contribution was the enactment of all measures on the administrative system suggested by the executive branch in the name of the Provisional President.³⁶

The exercise of the power of appointment by the Provisional President perhaps can be best examined by treating the offices as two groups which actually had been provided by the Provisional Constitution. In the appointment of officials other than members of the Cabinet, ambassadors, and ministers, the Provisional President seems to have exercised a tremendous influence, in spite of the theory that in this field as well as in others he should act upon the advice of the Premier and members of the Cabinet concerned. Barring the fact that in certain instances he had to meet the formal statutory requirements, the Provisional President actually had a free hand in the appointment of officials, especially for important positions. As a result, members of the Cabinet merely performed the ceremonial function of affixing seals or signatures to the edicts of appointment. The Provisional President found that the only real restriction on his appointment power was in the naming of the various military governors of the provinces. Many of them had been local leaders during the Revolution and had set themselves up as the highest authority of the respective provinces both in political and military affairs. Since the Provisional Constitution was silent on the relationship between the central and provincial governments, and since at first the central government lacked the strength to back up its authority, the Provisional President had no other resort but to legalize their position by formally conferring upon them the titles which they had already taken. But this re-

striction was considerably eased after the Central Government had suppressed the so-called "Second Revolution" in the summer of 1913.³⁷

In the appointment of members of the Cabinet and diplomatic envoys, the requirement that the concurrence of the legislature was necessary in every case in addition to that of the Premier has been bitterly criticised in theoretical terms. For example, Chou I-ping and Lo Chih-yüan have this to say:³⁸

Under a Cabinet system of government, since the members of the Cabinet assume the political responsibility for the head of the state in relation to the legislature, the appointment of the Premier should be, therefore, confirmed by the latter organ. Moreover, the formation of a Cabinet has usually been the task of the leader of the majority party in the legislature, so that in England and France, where the Cabinet system of government prevails, the legislature's concurrence in the appointment of the Premier alone is required; all other members of the Cabinet are to be selected by the Premier himself, without the consent of the legislature . . . The Provisional Constitution, in imitation of the General Plan, provided that not only the appointment of the Premier but also that of the other members of the Cabinet should equally be ratified by the legislature. In providing this, the framers intended to check the President from usurping powers and to have a responsible government. But in fact not only could a responsible government not be so secured, many political controversies were provoked between the executive and legislative branches of government over the question of the appointment of members of the Cabinet. The notable example was the big storm caused by the refusal of consent by the National Council to the appointment of six members of Premier Lu Chêng-hsiang's Cabinet. This fully illustrated the weakness of this provision. Indeed, if one wishes to adopt the Cabinet system of government, the spirit of that system must be understood. If the framers of the Provisional Constitution wanted to prevent the President from being a dictator, from appointing unpopular or untrustworthy persons into the Cabinet, and to prevent the Premier from having maladministration, they should not have ever worried about the lack of means to supervise and to repudiate them. Interpellation, impeachment, refusal to enact necessary legislation, and vote of lack

of confidence are weapons which the framers could have given to the legislature for use. If the legislature were backed by popular opinion of considerable strength, and were wise in using these weapons, then the Premier would have been always under its control. Otherwise, the sole possession of the power to concur in the appointment of members of the Cabinet would not be very helpful to the legislature in controlling the executive. Furthermore, the scheme stipulated in the Provisional Constitution was undesirable for another reason, namely, if the legislature was not in session when certain vacancies in the Cabinet were urgently to be filled, it would have to hold an emergency session. This could be very inconvenient in many respects. If an interim appointment was made, then so long as the interim appointee had not been formally confirmed by the legislature, he would be hesitant to put forth any long-range policy, and the affairs of the government certainly would be hampered. In short, the appointment of the Premier undoubtedly should be confirmed by the legislature in order to secure a chief executive whom it could trust. The concurrence to the appointment of other members of the Cabinet was really quite unnecessary.

Military Powers.—Military powers usually consist of the power to establish and administer the military establishments of the nation and the power to command the military forces. Though nominally both of these powers are vested in the head of the state, they are in practice usually exercised by different agencies. The Provisional President's military powers were provided in Article 32 of the Provisional Constitution, which says that "the Provisional President shall be Commander-in-Chief of the army and navy of the whole of China." Subject to the theory that the Provisional President was only a nominal head of the state, his powers in military affairs should of course, have been actually exercised by the Cabinet in his name. But in reality the personal authority and influence of the Provisional President were nowhere more conspicuous and dominating than in this field. He had personally trained the armies which were left by the Manchu court. Most of the commanders had been his long-time lieutenants. And it was he in his individual capacity, rather than his office or the government as a whole, who had the loyalty of the rank and file of the military forces.³⁹ He therefore not only directly discharged many powers in military affairs through the Board of the Chief of the General Staff, which was

closely attached to him,⁴⁰ but also always had his most trusted followers in uniform in the Cabinet, holding the portfolios of the army and navy, as well as those holding military governorships in many provinces.⁴¹

Being so powerful in military affairs, the Provisional President never failed to use this advantage in his conduct of political matters. For example, when the National Council refused to concur in the appointment of six persons as members of Lu Chêng-hsiang's Cabinet on July 18, 1912, the so-called "Associated Society of the Military and Police Units in Peking," under the President's secret inspiration, sent out a circular-telegram to the nation, denouncing that body as not having the public interest at heart. The Society, moreover, intimidated the members of the Council through a letter warning it not to further interfere with the President in his appointment of officials.⁴² Nor was this all. The President frequently also encouraged the military leaders to submit memorials to him urging something which he himself favored, but which the legislature disliked. Such messages strengthened his bargaining position. And his bold action to dissolve the Parliament in 1913 was indeed due to the fact that he had the backing of military forces.

Diplomatic Powers.—The Provisional President's diplomatic powers consisted of three parts: namely, the power to appoint and receive diplomatic envoys; the power to make treaties; and the power to declare war. Except in the case of receiving diplomatic envoys from other countries,⁴³ the exercise of these powers had to be confirmed by the legislature.⁴⁴ Theoretically, in addition to the requirement of the concurrence of the legislature, this was another field in which the President was to act only upon the advice of the Cabinet. In reality, however, he played a no less important role in foreign affairs than in domestic politics. And he was most successful in this field. He apparently achieved a leading position in the conduct of foreign relations for the following reasons: (a) he received the Premier and Minister for Foreign Affairs in frequent audience for discussion of the problems; (b) he was frequently interviewed by foreign diplomats, who regarded him as the "strong man" capable of affording security for the interests of their nationals; and (c) he shrewdly evaded the limitations put upon him, and where evasion proved impossible, he disregarded their validity altogether. In doing so he was apparently encouraged by the diplomatic corps in China.⁴⁵ The conclusion of the "Reorganization Loan Agreement" in April, 1913, with the Five-Power Consortium pro-

vided a remarkable example illustrating the President's success in diplomacy and his disregard for constitutional restrictions.⁴⁶

Powers to Grant Honors and Pardons.—It was provided in the Provisional Constitution that "the Provisional President may confer decorations and other insignia of honors,"⁴⁷ and "may declare general amnesty, grant special pardon, commute a punishment and restore rights, but in the case of a general amnesty, he must have the concurrence of the National Council."⁴⁸ In exercising these powers, the Provisional President actually played the same role he did in the exercise of the other powers mentioned. Particular attention is called to the fact that the incumbent Provisional President seemed to have seen a chance to glorify and strengthen his position by full use of the power to confer honors. As a result, various honors were handed out lavishly.

The Vice-President and the Presidential Staff Offices

The Vice-President was elected by the same organ and with the same procedure as in the case of the Provisional President. According to the Provisional Constitution, he had no particular duty other than to take the Provisional President's office in case the latter vacated it for any reason, or to discharge the powers and duties of the office in case the Provisional President was temporarily unable to perform them.⁴⁹ In practice, however, Vice-President Li Yüan-hung was for a time given both the post of the Chief of the General Staff and the Military Governorship of Hupei Province. By treating cordially the hero of the Wuchang Revolution, President Yüan Shih-k'ai was able to accomplish many political maneuvers through the Vice-President. The latter consciously or unwittingly allowed his name to be used in numerous circular-telegrams, with the signatures of other military leaders beneath his own. These messages either proposed something in anticipation of the President's wishes or denounced the President's political enemies.⁵⁰ Indeed, the summary execution of General Chang Chêng-Wu, a noted leader in the Wuchang Revolution and an eminent member of the Kuomintang, on August 15, 1912, and other illegal actions such as the dissolution of the Parliament and the enactment of the "Constitutional Compact" in the fall of 1913 were all undertaken on the pretext that the Vice-President had urged such measures.⁵¹ Thus, the President could claim that what he had done was not on his own initiative, and that if certain actions were illegal or undesirable, the Vice-President, who had been com-

monly regarded as a non-partisan and a benevolent man, was also to be held responsible.

As for the staff offices of the Provisional President, the offices provided in the General Plan still existed after the Provisional Constitution had replaced that instrument. The significant changes which took place while the Provisional Constitution was in force were three in number: namely, the establishment of the Board of the Chief of the General Staff,⁵² the creation of the National Bureau of Archives,⁵³ and the emergence of the secretary-general to the President as an important political element in the government. Since reference has already been made to the main function of the General Staff and since the National Bureau of Archives had nothing whatsoever to do with politics, it is necessary to observe only the third change. The fact that the secretary-general became so conspicuous was, to be sure, not due to any legal alteration of his status. The reasons are to be found in the following facts:

First, since the Provisional President really exercised all kinds of powers, the Secretariat of the Presidential Office naturally became the center of authority. Its members checked the reports and memoranda of the officials below and thus enjoyed an influence and authority over the latter. This situation applied equally to the reports from the departments, military units, and the provincial governments. The instructions from the President also went through their hands. They were able to maintain intimate contact with other officials. They could do favors for them; they could also cavil at them. Needless to say, the secretary-general, who headed this group and had the confidence of the President, found unlimited opportunities for manipulation.

Secondly, the incumbent secretary-general at the time was a most unscrupulous and adroit politician named Liang Shih-i. Besides being close to the President, he also concurrently held the posts of Deputy-Minister of Finance and Director-General of the Bank of Communications. Since the latter institution controlled all the railway receipts and was, therefore, always in funds even when the government treasury itself was empty, Liang made himself financially indispensable to the President. His subordinates daily pulled all the numerous strings, and he himself became recognized as "the power behind the Throne."⁵⁴

And finally, the fact that members of the Cabinet were usually not in accord in views or in action further gave the secretary-general an unusual chance to become the key man

of the government. If one were on good terms with him, one's case could be easily heard by the President, whose support was a determining factor in deciding cabinet controversies.

THE CABINET AND THE EXECUTIVE DEPARTMENTS

The Premier and the Members of the Cabinet

According to the Provisional Constitution, the Premier and the ministers of the executive departments should be called Members of the Cabinet.⁵⁵ Thus, no minister without portfolio was ever found in a Cabinet. As already mentioned, unlike the British system,⁵⁶ the Premier, whose appointment by the President required the consent of the legislature, did not constitutionally have a free hand to select his colleagues. They, too, must be formally confirmed by the legislature.⁵⁷ However, neither the Premier nor the other members of the Cabinet were required to be leaders of the party or of a coalition of several parties possessing a majority in the legislature.⁵⁸ The mere fact that the legislature cast a favorable vote for their nomination always made them qualified to assume office. Furthermore, while the Premier and his colleagues were allowed to address the legislature,⁵⁹ they were not required to have a seat in the legislature, and no one, in fact, held such a seat. In giving its concurrence to the appointment of the Premier and his colleagues, the legislature appeared never to have been seriously concerned with the exact policies which the nominated persons would propose, nor did any nominee ever make his political programs known until after he had taken office. The legislature's confirmation of the appointment had been secured either because the nominees had the goodwill of the legislature on account of personal qualities,⁶⁰ or because political expediency required such action.⁶¹

Being so formed, the Cabinet was always bound to be weak in relation to both the President and the legislature. It was weak in relation to the President because its members usually failed to present a united front and were not consistently backed by a party or parties that had a majority in the legislature. It was weak in relation to the legislature because the absence of the parliamentary chiefs of party or parties in it led the members of the legislature to feel that the government of the day was not their own creation and did not deserve their full support. From the standpoint of the legislature, a Cabinet so formed was also undesirable. It made it impossible for the legislature to have its own men in the government to

carry out its own policies. It made it uncertain about the policies which a newly nominated Cabinet would have. And it also made it difficult to control the Cabinet.

The Premier and his colleagues were not given any specific powers by the Constitution. By virtue of being required to assist the Provisional President in assuming responsibilities through the device of countersigning the latter's public measures, the Cabinet, which they composed, was theoretically the core of the government. It was to be the driving and steering force which was to set the whole machinery of government in motion. In the formation of public policy, it should be for them to initiate action as well as to make final decision. In doing this, they also should act as a cohesive entity and should be collectively responsible for what they did in that capacity. Thus it was provided in the Law on the Official System of the Cabinet that the following matters were to be first passed upon by the Cabinet in its meetings:⁶² (1) bills and presidential edicts; (2) budgets; (3) expenditures not stipulated in budgets; (4) official systems of military establishments; (5) treaties; (6) bills on declaration of war and making of peace; (7) appointments of high-ranking officials; (8) jurisdictions of the various departments; (9) measures which must be approved by the Council according to law; (10) citizens' petitions transferred from the legislature; and (11) matters which the Premier and other members of the Cabinet deemed necessary to be discussed in the meeting.⁶³

In practice, the Cabinet failed to assume the role the framers of the Provisional Constitution had assigned to it. For the same reasons which have been mentioned earlier in connection with the position of the President, the Cabinet soon became largely a supreme administrative body, with the duty of coördinating and supervising the various departments in accordance with the wishes of the President. Indeed, when the first Cabinet was in existence, Premier T'ang Shao-i tried hard to give it the position assigned to it in the constitutional structure.⁶⁴ He insisted that the Cabinet must carry out its own policy; and to that policy the President must submit. He wanted the ministers to direct the action of the President in all matters relating to the government. The President's speech on the opening of the National Council in Peking was even scrutinized and corrected by T'ang in advance.⁶⁵ Sometimes communications from the President also were returned by the Premier if he deemed that the things contained in them were inappropriate. In some cases, he personally

went to the Presidential Offices and argued forcefully with the President about matters. And the President usually yielded to him.⁶⁶

In enforcing the rule of collective responsibility, T'ang also tried to have all important matters before the Cabinet meetings decided by a majority vote.⁶⁷ The meetings were held as often as three times a week.⁶⁸ But T'ang's efforts to strengthen the authority and unity of the Cabinet eventually failed. He failed first to secure complete unity in the Cabinet. For instance, the Minister of Interior, Chao Ping-chün, never participated in the meetings of the Cabinet throughout the period of T'ang's Premiership. Chao justified his action on the grounds that very few things discussed in the Cabinet meetings were concerns of his department; and that since the maintenance of order in the nation was the most urgent thing, it would be more convenient for him to devote himself exclusively to the affairs of his department.⁶⁹

T'ang finally failed to maintain the authority of the Cabinet in relation to the President. It is to be noted that although President Yüan Shih-k'ai at first appeared to be self-restrained in dealing with the Cabinet, this did not mean that he was willing to be a figurehead forever. He was merely using the time to prepare for control of the government. When he deemed that the time had come for him to strike, he was not reluctant to do so. Thus in June, 1912, after having declined to appoint as Military Governor of Chihli Wang Chih-hsiang, who had been strongly recommended by the Premier, President Yüan appointed him instead as "Commissioner for Disbanding the Armies in Nanking" without the approval of either the Premier or any other members of the Cabinet.⁷⁰ Although this action on the part of the President brought a strong protest from the Premier and eventually led to the resignation of the majority of the members of the Cabinet including the Premier himself, the Cabinet was never able to regain the authority which it had lost.

The Cabinet's degeneration into a subordinate position in relation to the President was further aggravated by the following facts: First, when Chao Ping-chün became Premier,⁷¹ he called the meetings of the Cabinet at the Presidential Office, thereby placing the Cabinet more closely under the influence and control of the President.⁷² The Cabinet was then only to decide minor issues, which usually already had been discussed and deliberated upon by a Cabinet Committee composed of representatives of the various departments. Important matters were reserved for the Presidential decision. Consequently,

very little was really transacted in the meetings of the Cabinet. The Cabinet only formally existed; its functions were practically lost.⁷³

Secondly, the personalities of the Premiers and other members of the subsequent Cabinets after T'ang Shao-i's resignation also contributed to the weakness of the Cabinet. Unlike T'ang, Lu Chêng-hsiang and Chao Ping-shün were willing to remain personal followers of President Yüan and to confine themselves to carrying out his policies. They lacked the talents and ambition which the holders of such an important position as the Premiership should possess. Hsiung Hsi-ling was, indeed, a clever and able man; but the predominance of President Yüan's trusted lieutenants in his Cabinet and the political exigencies at the time eventually forced him to be a Premier not unlike Chao and Lu.⁷⁴

And finally, the absence of the consistent support of a strong political party or coalition of parties in the legislature behind the Cabinet undoubtedly contributed to its weakness.

In connection with an examination of the position of the Cabinet members as a whole, the functions of the Premier are to be particularly noted. Besides his being a member of the Cabinet, the Law on the Official System of the Cabinet assigned to him several special functions as follows: (1) At the meetings of the Cabinet he was the chairman, and in case of his absence, one of the other members of the Cabinet was to act in his place;⁷⁵ (2) he was to countersign all measures of the President, whereas other members of the Cabinet were only to countersign those which concerned their respective departments;⁷⁶ and (3) he was the head of the Cabinet, and in this capacity he was supposed to exercise general supervision over all the departments. He could temporarily suspend the executive orders and actions of the various ministers which he deemed incompatible with the maintenance of administrative unity, and then submit them to the meetings of the Cabinet for final action.⁷⁷

Undoubtedly, these substantial powers should have made the Premier "the keystone of the Cabinet arch," provided other elements were also favorable. But it was precisely due to the absence of other favorable relating elements that no Premier during this period achieved the power which was theoretically his. Disregarding the defects of personality, character, ability, reputation, and party support on the part of the holders of the Premiership, the following facts were already more than enough to prevent the Premier from being "a sun around which planets revolve."

First, he had very little control over the appointment and dismissal of his colleagues.⁷⁸ Thus he was unable to secure cohesion in his administration and to enforce discipline. Members of his Cabinet did not accept him as standing above and apart from them. The Premier's opinion was, therefore, never so preponderant as to be a decisive factor in settling matters in Cabinet. Also he was not the only connecting link between the Cabinet and the President; other members of the Cabinet frequently maintained direct contact with the latter and enlisted the President's support for their points of view. In some cases, the Premier was even overridden by certain colleagues who had the special favor of the President. The notable examples are as follows: (1) The dispute between Premier T'ang Shao-i and Minister of Finance Hsiung Hsi-ling over the loan policy in 1912, resulting in the victory of the Minister of Finance;⁷⁹ (2) The dispute between Premier Hsiung Hsi-ling and Minister of Army General Tuan Ch'i-jui over the appointment of General Ts'ai Ao as Military Governor of Hunan in 1913, resulting in the withdrawal of the nomination by the Premier; and (3) Minister of Communications Chou Tzŭ-ch'i's refusal to honor the request of Premier Hsiung Hsi-ling concerning the transfer of the funds in the possession of his department for the use of the military units.

Secondly, the lack of a healthy financial system also rendered the Premier unable to control the administration through the control of budget, which, in a parliamentary government, usually helps the head of a Cabinet effectively to achieve the coördination of the activities of the various departments.

As for the relationship between the Cabinet and the local governments, no provision was to be found in the Provisional Constitution. According to the Law on the Official System of the Cabinet, the Premier as well as the various ministers could issue executive orders concerning the affairs within their jurisdiction to the local governments and could suspend and nullify any executive orders or actions of the latter which they regarded illegal or beyond local jurisdiction.⁸⁰ Apparently, these powers were to be exercised in their own name and on their own initiative. Since the Cabinet was so weak and most of the local authorities were personally connected with the President, the influence of the Cabinet and the various departments on local affairs was, therefore, primarily confined to routine matters. Any significant action pertaining to them was almost never undertaken without consultation with and authorization from the President.

Members of the Cabinet were not only jointly responsible to the legislature for the general policy of the government but also severally responsible for the conduct of their own departments. But the framers of the Provisional Constitution apparently were confused about the distinction between a vote of lack of confidence and impeachment. Since they wanted to have a responsible Cabinet, they should have provided for the most effective procedure of enforcing ministerial responsibility by the legislature through the use of the vote of lack of confidence. They, however, did not do so. Instead, they gave the legislature the power to impeach members of the Cabinet for failure to perform their official duties or for violation of law, by a two-thirds majority vote.⁸¹ The impeachments were also subject to the President's veto power. For instance, if a member of the Cabinet was impeached by the legislature, the President would not be bound to remove him from office at once; and he could, within ten days after being notified about such a measure, ask the legislature, with stated reasons, to reconsider the matter. If at this time the legislature again passed a vote for impeachment by a two-thirds majority, the President then was to remove the member from office. The Provisional Constitution provided no punitive action against an impeached member of the Cabinet beyond removal from office. Consequently, one may argue that the framers did not overlook the distinction between a vote of lack of confidence and impeachment and that while they used the term impeachment they actually meant a vote of lack of confidence. Nevertheless, the requirement of more than a simple majority vote for impeachment, and the provision that the President could save an impeached minister from being removed from office by securing a vote of a few more than one-third of the members of the legislature in upholding his veto practically made the legislature unable to force any one to resign through this procedure.

On the other hand, neither the President nor the Cabinet was given the power to dissolve the legislature whenever an important adverse action was taken by the latter or when the same body was deemed no longer capable of reflecting the current public will. This fact, in addition to the preceding one, could lead to nothing but constant friction and disorder between the legislative and executive branches of government. Neither could find legal means to get rid of the other in case of disagreement. The obstructive tactics of the Kuomintang members, first in the National Council, then in the Parliament, and the illegal dissolution of the Parliament by Presi-

dent Yüan, therefore, should not simply be condemned as actions of persons striving only for personal political advantage at the expense of the national welfare. Such an explanation can never, as Professor Harold S. Quigley has indicated, cover the whole issue.⁸²

At this juncture, we may observe the instability of the Cabinet. While the Provisional Constitution was in force during this period, four persons successively held the premiership.⁸³ The average life of each Cabinet was about six months. The instability of the Cabinet cannot, however, be attributed to the fact that the legislature was too powerful or irreconcilable. The legislature at the time was, indeed, uncoöperative and ambitious. But it failed to bring the administration under its control. Its claims and obstructive tactics were either ignored or undermined. The resignations of Lu Chêng-hsiang and Chao Ping-chün from the Premiership were, though somewhat due to the pressure of the legislature, rather largely the result of these two men's attitude of martyrdom. The legislature did not take any action which obligated them to resign. Moreover, the resignations of T'ang Shao-i and Hsiung Hsi-ling from the same office had nothing at all to do with the legislature.⁸⁴

One also cannot infer that the instability of the Cabinet has caused frequent changes in policy. Since it was the President rather than the Cabinet who really controlled the administration, changes in the Cabinet meant only changes of the executors of policy. Executors of policy came and went; policy itself remained about the same. This phenomenon was, on the other hand, extremely significant. It meant that although the legislature was, at times, able to force a Cabinet or certain ministers to resign by using obstructive tactics or other extraordinary methods, it could not do away with the real policy-maker of the government. The President at the time was a man of real strength. Short of impeachment, the legislature did not have any legitimate procedure to get rid of him. And since the device of impeachment was so difficult to apply, the legislature was practically helpless in any attempt to rectify the government's policy.

The Staff Offices and Other Auxiliary Organs of the Cabinet

The main staff office of the Cabinet was called the Cabinet Secretariat.⁸⁵ This office had no statutory powers or executive responsibilities; it existed merely to assist the Premier and other ministers in the exercise of their collective respon-

sibility through the Cabinet. Its duties included handling the business and keeping the records and seals of the Cabinet, transmitting the decisions of the Cabinet to the interested departments, preparing the agenda of meetings, and taking the minutes. The secretariat was headed by a secretary-general. Under him were a chief-secretary, six senior secretaries, six junior secretaries (ch'ien-shih) and a number of clerks. Besides the chief-secretary,⁸⁶ who was to discharge the secretary-general's duties in the latter's absence, all of these officials were the subordinates of the secretary-general, and under his direction they carried out the routine business of the office.

The secretary-general was, however, not a permanent civil servant. Nor were the senior secretaries. They were usually appointed by the President upon the recommendation of the Premier, and they gave up their positions whenever the Premier himself resigned. They were, therefore, the trusted staff of the Premier. The secretary-general particularly played a considerably important role in the Cabinet. Apart from routine business, he also conducted public relations for the Premier and advised him on political matters. Indeed, the successive holders of the post were invariably persons of ability. Wei Ch'ên-tsu, Secretary-General of T'ang Shao-i's Cabinet, was especially praised for his skillful dealings with the press.⁸⁷ But since the real center of power in the government was then the Presidential Office, the secretary-general to the Cabinet never became as influential as was the secretary-general to the President.

In addition to the Cabinet Secretariat, there were the Bureaus of Legal Affairs,⁸⁸ Civil Appointments,⁸⁹ Printing and Engraving,⁹⁰ Mongolian and Tibetan Affairs,⁹¹ Investigation of Merit,⁹² Compilation of Various Codes of Law,⁹³ and Water Conservation⁹⁴ either as staff offices or as directly controlled agencies. Since their names can clearly indicate their functions, no elaboration is needed.

The Executive Departments

According to the Law on the Official System of the Cabinet and the General Regulations on the Organization of the Various Departments, there were ten departments, in charge respectively of foreign affairs, internal affairs, finance, army, navy, judiciary, education, agriculture and forestry, industry and commerce, and communications.⁹⁵ After the Parliament was dissolved, President Yüan issued an edict on December 23, 1913, to the effect that the Department of Agriculture and

Forestry was to be combined with the Department of Industry and Commerce.⁹⁶ The combined agency was called the Department of Agriculture and Commerce. Thus the number of the departments was reduced from ten to nine, and the number stood at nine all the way through to 1927,⁹⁷ in spite of the fact that the nation's fundamental law underwent many changes.

Each department had a minister who was a member of the Cabinet.⁹⁸ Within his jurisdiction he could issue departmental decrees, directing and regulating matters. He also could, as already mentioned, suspend or nullify the executive orders and other measures of the local officials if he deemed them illegal or beyond their jurisdiction. For the appointment and dismissal of high officials, he was first to consult the Premier and then to ask the President to give his sanction. He had, however, a free hand in the appointment and dismissal of other officials.

A minister was usually assisted by a deputy minister,⁹⁹ who could discharge all the functions of the minister in case the latter became unable to act, with the exception of attendance at Cabinet meetings, countersigning presidential measures, and issuing departmental decrees.¹⁰⁰ Thus, in fact, a deputy minister could only discharge the routine business for the minister. In political matters, he could not officiate until a special commission was secured from the President.¹⁰¹

Each department consisted of three to eight divisions. After the end of 1913, independent bureaus were added to several departments.¹⁰² The subdivisions within these units were to be decided at the discretion of the ministers concerned.

THE CIVIL SERVICE

For centuries, China has been famous for having an excellent system of civil service, based largely upon an objective and competitive examination system.¹⁰³ Since the establishment of the Republic, a healthy civil service has, however, never been established, although elaborate provisions concerning the appointment, compensation, promotion, examination, and discipline of the civil officials can be readily found even in the early period of the Republic. Indeed, the undertakings in this early period directly influenced those of more recent years while the Kuomintang was in power. Bearing in mind that these provisions were not completely applied in practice during the early period of the Republic, we can proceed to outline the system as it appeared on paper. In the course of presentation, attention will be given espe-

cially to the parts of the system which were actually carried out and to their effects upon the whole governmental machinery of the time.

The Appointments, Emoluments, and Protection of the Civil Officials

The procedure of appointing civil officials varied with their rank. The Japanese three-rank system was adopted at the very beginning of the Republic and has been adhered to until the present day.¹⁰⁴ Roughly speaking, the so-called "selected" rank was one to which the higher officials such as the deputy ministers, ministers to foreign countries, and the heads of other independent offices were appointed. To be qualified for an office of this rank, a person needed either to have been an official of a lower rank for at least three years or to previously have been an official of the same rank for some time. If an appointee was to serve directly under the Premier, he had to be nominated by the Premier and formally commissioned by the President. If he was to serve in one of the various departments or under the immediate supervision of a minister, he had to be nominated by the minister concerned with the advice and consent of the Premier, and afterward formally commissioned by the President.

The second, the "recommended" rank, included such officials as the chiefs of divisions and sections, counselors, and senior secretaries. A candidate for such positions must have successfully passed the "high civil service examination," have been a teacher in an officially recognized university or college, or have been an official of the same rank previously. The procedure for his appointment was similar to that of the "selected" rank.

The lowest was the "delegated" rank, so-called because the appointment was delegated to the heads of the agencies without requiring a presidential commission. Most of the administrative clerks of the various departments were in this category. Candidates for office of this rank comprised those who had passed either the "high civil service examination" or the "ordinary civil service examination," or had previously been officials of the same rank, or were promoted from the junior clerkships.

Each rank was subdivided into several grades, the "selected" rank having three, the "recommended" rank seven, and the "delegated" rank twelve. The rank was, however, more important than the grade. The difference in rank meant that not only the posts but also the qualifications of the appointees

differed.¹⁰⁵ The grades, on the other hand, were only a scale for salary raises.¹⁰⁶

The classification of all civil officials into three ranks was neither logical nor convenient. The descriptive titles "selected," "recommended," and "delegated" merely betrayed a spirit of bureaucratic hierarchy. The oversimplified classification made it difficult to assign to the numerous categories of civil officials a proper rank. Promotions from one rank to another became too difficult.

The salary scale according to which civil officials were paid was also defective. The highest officials, those of the top grade of the "selected" rank, received \$600 (Chinese currency) a month as salary and, in some cases, a certain additional allowance. But the officials of the lowest grade of the "delegated" rank received only \$50 with no allowance.¹⁰⁷ The discrepancy was too great to be healthy. The extremely low salary for the lowest grades of the delegated rank was conducive neither to efficiency nor to a spirit of self-reliance on the part of the officials concerned.

Provisions designed to protect the civil officials were also found in the statutes. Civil officials who were not guilty of any wrongdoing and were not convicted according to the Criminal Law or the Law on the Discipline of the Civil Officials were not to be deprived of their offices except on the following grounds: (1) physical disability, insanity, or old age; (2) voluntary resignation. The release from office on the first ground was, moreover, first to be reviewed by one of the disciplinary commissions in order to safeguard the official concerned from arbitrary action by his superior.¹⁰⁸

Without his own consent, an official was also not to be transferred to a position of a lower rank or grade. This and other stipulations of a similar nature were obviously intended to secure stability of tenure for the civil servants.¹⁰⁹ In practice none of these protective devices proved of any value. Discharge of officials on a large scale frequently occurred, not only on political grounds, but also for personal reasons.¹¹⁰ The absence of permanence of tenure in the Chinese civil service during the early period of the Republic undoubtedly intensified the bad effects of the frequent reorganization of the Cabinet, whereas in France, for instance, the same bad effects are somewhat mitigated by the permanence of tenure in the French civil service. Here, as well as elsewhere, one is convinced that a good practice has to grow up through custom and cannot be established solely by legislation.

The Civil Service Examinations

The traditional Chinese civil service examinations, which had been held with great regularity for about six centuries before the establishment of the Republic, had been abolished in 1905.¹¹¹ After 1905, though some special examinations were held, not based on literary excellence, they were not adequate as a substitute for the old system. Consequently, the normal supply of recruits for the administration of the empire was cut off, and the scholars' prospects of getting placed in the civil service were dimmed. After the Republic was established, the Western system of civil service examinations was introduced with certain adjustments in order to carry on some of the old form and spirit. As mentioned before, laws to this effect were quickly enacted. It was, however, not until 1916 that the first examination took place. The examinations were not regularly held, however, so the officials recruited by this procedure never played a very important role in the Chinese bureaucracy. A large fraction of officialdom in the central government during the early period of the Republic were the remnants of the former imperial court and persons who were appointed through favoritism or as the perquisite of the leading political figures. While the former element brought into the new regime the abuses of the old bureaucracy, such as red tape, routine, departmentalism, formalism, inertia, evasion, and a tyrannical attitude toward the people, the latter hampered the efficiency of administration and harassed the ministers.

The system under the Kuomintang regime had three kinds of examinations: those for candidates for elective offices, those for candidates for appointive offices, and those for professional and technical men.¹¹² The civil service examinations during this period, however, were exclusively for candidates for appointive offices. Normally, there were two kinds of examinations of this sort: the higher examination and the ordinary examination.¹¹³ The higher examination was theoretically for the top cadre of administrators. Successful candidates were appointed to a rank which should enable them in time to reach the top of the service. It consisted of three stages of examinations. For those who only had a high school diploma or a comparable education, a qualification examination was required before being allowed to take the preliminary examination. Those who had an academic standing of a higher level were freed from going through this procedure. They could directly take the preliminary examination. The

successful candidates in the preliminary examination were to go through a period of probation for two years in the agencies of government. Then the heads of the agencies concerned were to ask for a final examination for the candidates on probation. The successful candidates in this examination were to be formally commissioned to proper positions in the government according to their records. Those who failed to pass this test were required to continue on probation for a period to be decided by the Commission for Higher Civil Service Examination. They might thereafter try their lot for a second or a third time, but not beyond that.

The ordinary examination was for average civil service appointments, and graduates of high schools or those with comparable education were eligible for the examination. The examination was completed at one sitting, and the candidates were not required to go through a period of probation before receiving a formal commission.

The preliminary test of the higher examination and that of the ordinary one, being primarily intended for the graduates of colleges and schools, were naturally academic and were apt to repeat the graduation examinations of the colleges and schools. Generally speaking, the subjects in which the candidates were examined were not suited to test either their general ability and capacity for development, in the way British candidates for the administrative class are tested, or their technical knowledge and present fitness for a position, in the way candidates for the higher civil service positions in other countries are tested. However, the two-year period of probation in the case of the higher examination should, at least theoretically, have been able to mitigate this defect to some extent if the systems were honestly put into effect.

Also, unlike the system under the Kuomintang regime, which exalted the examination branch into a separate power on a par with the other powers of the state (the executive, the legislative, the judiciary, and the control) and took the conduct of official examinations entirely out of the hands of the executive branch of government, the examinations held by the government of the early Republic were under the overall supervision of the Cabinet. There were three boards of examiners: a board of examiners for the higher civil service, a board of examiners for the ordinary examination of the central government, and a board of examiners for the ordinary examination of local governments. All of these boards were ad hoc in nature, and each consisted of one chairman,

several examiners, and one or two censors, appointed either by the President upon the recommendation of the Premier or by the heads of the agencies concerned. According to law, members of the boards were to be selected from persons in official, academic, and professional life with a view to enshrouding them with the kind of solemnity mystically associated with imperial examination commissioners in older days.

These boards were only to conduct the examinations. The administrative side of the examinations, the registration of qualifications, appointments, and resignations of officials of the "selected" and "recommended" ranks, affairs concerning retirement, pensions, decorations, and merits of civil servants were within the jurisdiction of the Bureau for Civil Appointments, which was, as already mentioned, an auxiliary agency of the Cabinet. Theoretically, the Premier or the Cabinet could use this Bureau as an instrument to control the civil service in order to maintain the unity of the service as a whole. Unfortunately, the civil service system then largely existed only in statutes. No attention was paid to it in practice.

Discipline of the Civil Service

On January 3, 1913, a Draft Law on the Official System of the Commissions of Disciplinary Action against Civil Officials was promulgated.¹¹⁴ According to its provisions, two kinds of commissions were to be established: one for the cases concerning higher officials, another for those concerning officials of lower ranks. One year later, a presidential decree was issued to the effect that the two commissions were to be preserved with certain adjustments pertaining to their internal organizations.¹¹⁵

According to the draft law, the commissions of disciplinary action against higher officials were to decide upon disciplinary measures against officials of the "selected" and "recommended" ranks. Commissions were to be formed both in the central and the various provincial governments. The one in the central government was to consist of a chairman and eight commissioners, selected by the Premier from (1) the President's advisers, (2) the President of the Administrative Court, (3) the President of the Supreme Court, (4) judges of the Administrative Court, (5) judges of the Supreme Court, and (6) other officials above the fourth grade of the "recommended" rank. The President was also to concur in the appointment. In a provisional government the commission

was to consist of a chairman and six commissioners, selected by the highest administrative official of the province from (1) judges of the High Court of the province; and (2) provincial officials of at least the "recommended" rank. After being selected by the provincial chief, they were also required to have formal commissions from the President upon the recommendation of the Premier. None of these commissions, whether in central or in provincial governments, were standing agencies. A commission was appointed only when a disciplinary action needed to be taken, and the commission was dissolved as soon as the case was concluded.

According to the presidential decree, only the central government had the power to take disciplinary action against higher officials; provincial governments no longer had any. Furthermore, the commission in the central government became a standing agency of the government instead of being ad hoc in nature. But members of the commission were still selected by the same procedure and from the same sources.

The disciplinary commissions for lower officials were to be organized in the agencies of the central and provincial governments in accordance with the draft law and the presidential decree. Officials of the "delegated" rank were disciplined by them. Each commission was to consist of a chairman and three to six commissioners.¹¹⁶ The commissioners were appointed by the head of the agency concerned, who also was to be the ex officio chairman of the commission.

According to the Draft Law on the Discipline of Civil Officials,¹¹⁷ all officials, including those on probation, who acted contrary to their duties, committed certain irregularities, or were guilty of behavior prejudicial to the prestige and reputation of the general body of civil service should be disciplined. Disciplinary measures ranged from reprimand, through reduction of salary, demotion, to dismissal. Generally, no argument took place. A commission arrived at its judgment on evidence of papers presented by the head of the employing agency and the official concerned. If necessary, the commission could, however, call the official concerned for oral questioning, and the employing agency was to provide him with traveling expenses. Whenever an official was being charged in a criminal court for the same conduct which caused the initiation of disciplinary action, the commission was either to cease the deliberation on his case or not to hear the case at all. However, after the criminal court rendered its decision, the commission might resume the case if it thought fit.

For convenience of presentation, it may be added here that another decree on the discipline of civil officials was promulgated on January 17, 1918. Its peculiar features were as follows: (1) to the original disciplinary measures, a new device, known as "recording of misconduct" was added as an intermediary action between reprimand and reduction of salary; (2) the President could ask the disciplinary commission to consider disciplinary action against officials of the so-called "special" rank which included the ministers and other important officials of government; and (3) the head of the employing agency might suspend the officials concerned before a disciplinary action was decided upon by the commission, if such action was deemed necessary.

The foregoing were disciplinary procedures of a quasi-judicial nature. During the early years of the Republic, civil officials were also punishable by their superiors in accordance with purely administrative procedures. In point of fact, administrative procedures were more frequently resorted to than did the quasi-judicial ones, for the latter sometimes proved to be too cumbersome to apply.

AUDITING OF GOVERNMENT EXPENDITURES

Before proceeding to a description of the system of government auditing, which, as a matter of fact, largely existed in statute books only throughout the life of the government in Peking, it seems desirable to make a brief mention of the traditional Chinese practice in this regard. Generally speaking, financial procedures in traditional China were susceptible to maladministration and financial irregularities. It was particularly so under the Manchu Dynasty. Except during the first three years of the reign of Emperor Yung Chêng (i.e., 1723–1735), the Manchu government did not have a special agency in charge of auditing government expenditures. Agencies of the government were merely required to submit annually two reports on their receipts and expenditures to the Board of Revenue, and the Board of Revenue seemed to have seldom done anything with such reports besides recording them in its books. There was no such thing as budgetary appropriations against which the Board of Revenue could check the financial reports of the various agencies. In the case of provincial governments, it was more difficult for the Board of Revenue to question the legitimacy of some of their disbursements, for, as we have said previously, custom had left it to the discretion of provincial governors to manage provincial finances so long as they sent in their apportionments of the imperial revenue.

When the Manchu Dynasty was rapidly coming to an end, attempts were made to improve its financial administration. Among other things, the Imperial Government promulgated in 1906 a draft law on the organization of a board of audit. Although the downfall of the Manchu Dynasty came earlier than the scheduled date for the establishment of the new board, the draft of its organic law apparently served, to a large extent, as a blueprint for the Provisional Regulations on the Official System of the Bureau of Audit of the Republic.¹¹⁸

The Bureau of Audit

Government auditing was the function of the Bureau of Audit. It was placed directly under the control of the Premier. Besides the director-general, who was to supervise the entire business of the bureau, there were five branches within the agency in charge of auditing the income and expenditures of the central and local governments.¹¹⁹ While important matters were to be decided by the bureau's directors, who included the director-general and the heads of the five branches, minor matters were left to the decision of the various branches, each of them composed of several auditors. In all, there were twenty-five auditors, who were appointed by the Premier upon the recommendation of the director-general. The heads of the various branches were selected from the auditors by the director-general. Since the bureau itself was designed only as a temporary agency, the tenure of auditors was not protected by law, and their rank was not high.

The bureau was further staffed by a number of accountants, clerks, and other minor officials.

Functions of the Bureau of Audit

The Bureau of Audit had the following functions:

Pre-auditing.—According to the legal provisions at the time, the head of each government agency was required to make a monthly estimate of expenditures to be submitted to the Department of Finance for sanction. The sanctioned estimate was then to be sent to the Bureau of Audit, which would keep it on file. When an agency received the Department of Finance's warrant for drawing money from the treasury, it was to sign three copies of receipts, which should be filed with the treasury, the Accounting Office of the Department of Finance, and the Bureau of Audit, respectively. Thus the Bureau of Audit could check the disbursements against the estimate. This was obviously designed to remind the agency concerned and the financial establishments of

their duty not to exceed the pre-established budget figures. But from the early days of the Republic, there were rarely any estimates made according to this procedure and, in due time, the preparation of a budget was dropped entirely and nothing was accomplished in this direction.

Post-auditing.—Post-auditing by the Bureau of Audit consisted of the audit of the actual accounts of the fiscal year and of the monthly accounts of the various agencies. The accounts of the fiscal year of the nation were first to be compiled by the Department of Finance, and then to be submitted to the Bureau of Audit for review before being sent to Parliament. In reviewing these accounts, the Bureau of Audit should have been playing a role similar to that of the Comptroller and Auditor General in the United Kingdom. But because the government at the time tended to emphasize the form over the substance of the vouchers, bills and the like that might be attached to the accounts and because the Parliament existed only for a short period, the bureau was prevented from becoming as useful and effective an organ as the Comptroller and Auditor General in the British Government.

Before the accounts of the fiscal year of the nation were compiled, the head of each government agency was required to report actual monthly accounts. These accounts were to be submitted first to the Department of Finance for review, and then to the Bureau of Audit for re-examination. If there was any item which the bureau regarded as deserving further inquiry, it might ask the agency concerned for explanation. Unfortunately, this supervision likewise was never satisfactorily executed since the entire activities of the government at the time were not favorable to its realization.

Inspection of the National Treasury.—At the end of each month, the Bureau of Audit might send officials to see the cash funds, bonds, and financial documents that might be in the Treasury's possession; in the meantime, the Treasury was also required to submit its accounts of receipts and disbursements to the Bureau of Audit for examination.

Inspection of Account Books of the Various Government Agencies.—The Bureau of Audit was to design and establish the essential account books, vouchers, and other financial documents for the various government agencies in consultation with the Department of Finance and the agencies concerned. While the agencies themselves could design and establish the supplementary documents, the Bureau of Audit's final approval in each case was still required. In order to check whether the various agencies had faithfully and cor-

rectly recorded their financial transactions in the authorized way, the Bureau of Audit might at any time demand to inspect their recording of financial operations.

Inspection of Official Property.—All government agencies were required to list the official properties in their possession, and to send the lists to the Bureau of Audit for inspection. In case of undertaking a construction project or of purchasing expensive equipment, the agency concerned was also required to send, with stated reasons, the design of the project or equipment, and the price lists to the Department of Finance for transmittal to the Bureau of Audit for examination. Until examined by the latter, no action was to be taken by the agency in these matters. The inspection of the Bureau of Audit was further needed when the government agencies were inviting bids for contracts or having auctions of a value of \$500 or upwards.

Inspection of National Debts.—It was required that the agencies concerned should from time to time submit reports to the Bureau of Audit covering the amounts of newly incurred national debt and new reduction of loans. The actual monetary transactions on these matters were also to be reported to the same bureau. Moreover, in contracting domestic or foreign loans, the agencies concerned were to state the conditions of the contracts and the purposes for which the money would be spent. The government agencies, when paying domestic debts by lottery drawings, must also invite representatives of the Bureau of Audit to be present.¹²⁰ This provision was, however, applicable only before the enactment of the law on the inspection of national debts.

Besides, the head of each government agency was to submit to the Bureau of Audit a list containing the names, and biographical histories of the disbursing officials under him. Whenever a disciplinary action was deemed necessary against any of these officials for financial irregularities or misconduct, the Bureau of Audit might request it of the head of the agency concerned. It also might question the head concerning any misconduct of these officials. If necessary, the bureau could directly send representatives to the spot to make a first-hand investigation, and could jointly decide matters with the head of the agency concerned. Finally, the bureau could make any suggestion to the President through the Premier of the improvement of its procedures.¹²¹

From the above, one can see that the Bureau of Audit's powers were not narrow or incomprehensive. The problem for it was how to exercise effectively the powers it had been

given. Indeed, the numerous difficulties which confronted the bureau practically nullified the whole system of audit.

THE NATIONAL COUNCIL

While the Provisional Constitution was in force,¹²² the functions of the legislative branch of government in China were performed first by the National Council and then by the Parliament. For convenience of presentation, this section is devoted exclusively to the former agency.

The Composition of the National Council

The National Council, as has been mentioned, was already in existence before the Provisional Constitution was promulgated. With the promulgation of the Provisional Constitution on March 11, 1912, the composition of the Council was, however, considerably changed. Article 18 of the Provisional Constitution provided that the provinces, Inner and Outer Mongolia and Tibet should each elect and depute five members to the National Council, and Chinghai should elect one member. The election districts and methods of election were to be decided by the localities concerned. In practice, members from the provinces were almost invariably elected by the respective provincial assemblies.¹²³ Although the electoral method was decided by the localities concerned, the qualifications of the candidates were defined by the Law Governing the National Council, promulgated on April 1, 1912.¹²⁴ According to its provisions, a candidate must be a Chinese citizen, twenty-five years of age or more, must not have been deprived of his civil rights, and must not be an opium smoker, an active serviceman in uniform, or an administrative or judicial official.¹²⁵

Since the Council was designed only to serve the nation before the convocation of the Parliament, its members were to remain in office until the Council itself was replaced by the Parliament.¹²⁶ In order to prevent the repetition of certain undesirable practices under the General Plan, it was provided that the constituencies could not recall their representatives and that members could not resign from the Council without first obtaining the authorization from the Council to hold a by-election. Members of the Council were also required to be regularly present at the meetings of the Council. While leave of absence for five days could be secured from the Speaker, any longer period of absence was to be approved by the Council.¹²⁷ The usual parliamentary privileges, such as absolute freedom of speech in the chamber of the Council

and freedom from being arrested without the permission of the Speaker of the Council, except for flagrant offences, were given to the members of the Council.¹²⁸ But they, unlike the members of the Parliament at later time, received no salary.¹²⁹

There were a speaker and deputy speaker in the Council, who were elected by the members of that body for the duration of the Council, a majority vote being required for election.¹³⁰ The Speaker was the presiding officer of the Council and represented the Council in its external relations. Apart from these, he was to preserve the order of the Council and to supervise the compilation of the minutes. The chief-secretary and other members of the staff of the Council were also appointed, dismissed, and directed by him. In case of a tie, his vote was to decide the matter.¹³¹ The Speaker's enormous influence was further strengthened by his having other functions in connection with the Council's procedures, such as the preparation of agenda and the convocation of emergency sessions, which will be considered later. What needs to be mentioned here is that while the Speaker was not to vote in the various standing and select committees, he was, nevertheless, given the right to be present and to speak.¹³²

In practice, although the Speaker at the time never ruled and served the Council with absolute impartiality as does the Speaker of the House of Commons in the United Kingdom, he, like the Speaker of the House of Representatives of the United States, seems to have guided the Council with considerable success, and his prestige appears to have been high.¹³³

When the Speaker was absent, the deputy speaker was to discharge his duties.¹³⁴ If both of them were unable to be present, the Council might choose a temporary speaker.¹³⁵ The Council could consider the punishment of the Speaker and the deputy speaker if they were accused by more than ten members of conducting the sessions of the Council in an undue partisan spirit. A speaker might be removed from his chair by majority vote cast on such occasions.¹³⁶

To assist the Speaker in the discharge of the miscellaneous affairs of the Council, there was a secretariat. Under the supervision of the chief-secretary, its staff members were to take the minutes and to do other clerical work.¹³⁷

As President Lowell once wrote "no great representative assembly at the present day can do all its work in full meeting,"¹³⁸ so the Council relied upon its committees to transact much of its business. There were three kinds of committees: the Committee of the Whole, the standing committees,

and the select committees. The Committee of the Whole was simply the Council itself acting under special forms of procedure, the chief difference being that the chairman of the committee presided, and that a third instead of a majority of the whole membership of the Council constituted a quorum.¹³⁹ The chairman of the committee was elected by the Council, the Speaker and the Deputy-Speaker both being barred from candidacy. The committee was usually employed to discuss only those matters which were of the highest importance, or those in which members of the Council could more freely express their opinion without embarrassing the Council itself. The Council could go into the Committee of the Whole at any time by a majority decision at the request either of the Speaker or of ten or more members.

In all other instances bills were committed to one of the five standing committees created to deal with matters relating to legal affairs, finance, general political affairs, people's petitions, and punishment.¹⁴⁰ The sizes of these committees were to be decided by the Council, which also selected the personnel. The chairmen of these committees were elected by their own members.¹⁴¹ Although no legal provision required that the committees should be miniatures of the Council itself, representing all the parties in proportion to their numbers, in practice they were so organized. The committees could examine bills jointly if the same matter was being considered at the same time by more than one committee.¹⁴²

Select committees were designed to consider some special matter lying outside of the jurisdiction of the other committees. A select committee might be appointed by either the Speaker or the Council itself; members of the standing committees were eligible for election. Members of a select committee were also to choose their own chairman. As distinguished from the standing committees, which were permanent bodies, the select committees were to expire when they had made a report upon the special matters committed to their charge. When the Council was in existence, it frequently appointed select committees, and the matters considered by such committees ranged from the adoption of a national flag to the investigation of a dispute between the military governor and the provincial council of Kwangtung.

Visitors were barred from all committee meetings, though members of the Council were usually permitted to be present in a standing or select committee in which they did not have membership. But the committee concerned still had the right

to exclude them. The chairmen of the various committees had the duty to report the committees' findings to the Council.

As for the political complexion of the Council during the first few months of its existence in Peking, it was reported that more than five-sixths of its 121 seats were held by three major parties, with the T'ung-mêng Hui and the Kung-ho Tang (the Republican Party) holding some forty each and the T'ung-i Kung-ho Tang (the United Republican Party) a little over twenty.¹⁴³ Generally speaking, the T'ung-mêng Hui insisted upon the supremacy of legislative power in order to check President Yüan Shih-k'ai. The Kung-ho Tang, which was formed shortly after the opening of the Council in Peking by the amalgamation of the Min Shê (the People's Society), the Min-kuo Kung-hui (the Society of the Republic), the Kuo-min Hsieh-chin Hui (the People's Association), the T'ung-i Tang (the United Party), and the Kuo-min Tang (the People's Party), was rather conservative, and its members almost always supported the President.¹⁴⁴ Thus, these two parties became irreconcilably hostile to each other. Since neither was able to control a majority in the Council, the relatively moderate T'ung-i Kung-ho Tang and other minor parties held the balance of power, and whenever the T'ung-mêng Hui and the Kung-ho Tang members were in conflict, these third parties, by throwing their weight to one side or another, could virtually control the chamber. The fact that the speakership and a number of important committee chairmanships were held by members of the T'ung-i Kung-ho Tang is a good illustration of the influence of the third parties.¹⁴⁵

Toward the end of 1912, party alignment in the Council underwent some changes as a result of political regrouping in the nation as a whole. On August 25th, a new party known as the Kuomintang was organized in Peking by the amalgamation of the T'ung-mêng Hui, the T'ung-i Kung-ho Tang, the Kuo-min Kung-chin Hui (the People's Progressive Party), the Kung-ho Shih-chin Hui (the Progressive Republican Party), and the Kuo-min Kung-tang (the People's Public Party).¹⁴⁶ Upon its formation the Kuomintang took about half of the total number of seats in the Council, whereas the political strength of the Kung-ho Tang remained unchanged. Although the Kuomintang was now in a better position to operate in the Council than did the defunct T'ung-mêng Hui, its ability to control the Council continued to be weak since it did not have an absolute majority on the floor. The balance of power was still held by the minor parties, which, two months later, also amalgamated themselves into a new organization called the Min-chu Tang (the Democratic Party).¹⁴⁷

The Procedures of the National Council

The National Council was a temporary organ, so that its sessions were to last only until it was dissolved upon the convocation of the Parliament.¹⁴⁸ But the Council might adjourn itself for a maximum period of fifteen days by a decision of a majority vote, at the request of the Speaker. The Speaker could, however, call the Council back to session at any time during the adjournment, if an urgent matter awaited decision.¹⁴⁹

The number and hours of the Council's sittings were decided by the Council. But special meetings could be held if the Speaker deemed necessary.¹⁵⁰ The Speaker was also to prepare the agenda of each sitting, which was to be circulated to the members of the Council two days in advance and should also be published in the Journal of the Council.¹⁵¹

For a sitting, a majority of the members who had actually reported to the Council constituted a quorum (i.e., 61), and a majority of the members present could pass a motion, unless otherwise provided by the Provisional Constitution or the Law Governing the National Council.¹⁵² In case of a tie, the vote of the Speaker was to decide. It was required that members who had personal interest in the case under consideration should refrain from participation in the deliberation.¹⁵³ The decision of the Council was binding upon those who did not take part in the deliberation and voting.¹⁵⁴ All sittings were to be open to the public. But the Council might, by a majority vote, hold secret meetings either at the request of the government or in response to a motion made by the Speaker or the members.¹⁵⁵

Members of the Cabinet and their representatives were allowed to appear and to speak in the meetings of the Council and the various committees at any time,¹⁵⁶ provided this would not interrupt a speech which was being delivered by a member of the Council. Furthermore, the Council and its various committees also had the right to request the presence of members of the Cabinet and other government representatives in their meetings for questioning.¹⁵⁷ These provisions apparently were designed to secure a closer relationship between the legislative and executive branches of government. But since the successive Cabinets at the time were not necessarily composed of the men who could control the legislature and the legislature was given the complete right to arrange the order of its business for each day, such devices were, of course, inadequate to attain that highly desirable objective.

All bills concerning legal affairs, finance, and other im-

portant matters were required to go through three readings before becoming statutes. But a summary procedure might be employed if the Council so decided at the request either of the government, or of the Speaker, or of its members.¹⁵⁸ Proposals submitted by the government were to be first examined by the committees. The Council could take final action on these measures only after the committee concerned had made their reports thereon. Similarly, the committee examination might also be omitted by a majority vote of the Council at the request of the government.¹⁵⁹ Before the Council had taken final action on a government measure, the government could, at any time, propose amendments thereto, or withdraw the measure itself.¹⁶⁰ Private members' bills could be introduced at the request of ten or more members. But this requirement was applicable only to the introduction of law bills; measures on other matters might be initiated by the joint motion of three or more members, provided they gave notice to the Speaker in advance.¹⁶¹ When the Council was holding a meeting, a member could make an urgent motion, and the Speaker was to submit the matter to the Council for decision if the motion was seconded by another member.¹⁶²

The Powers and Functions of the National Council

Since the Provisional Constitution largely stipulated a system of government calling for ministerial responsibility, it gave the National Council more powers than the General Plan previously had done. The powers and functions of the Council at this time were as follows:

Legislative Powers.—The Council obtained the power to legislate from two provisions of the Provisional Constitution; one being Article 16, which said that "the legislative power of the Chinese Republic is exercised by the National Council," another being Section 1 of Article 19, which authorized the Council to pass all law bills. The Council was, of course, not the sole organ in charge of legislation. As mentioned above, the administration was not only given the right to originate bills, but also the suspensive veto power. The coördination between the legislative and executive branches of government in legislation at this time was not much better than when the Parliament was in existence at a later period. Yet the Council's achievement in lawmaking deserves considerable praise in that it passed more than two hundred and thirty measures within fourteen months, including such important measures as the Law on the Organization of the Parliament,

and the laws governing the electoral procedures of the two Houses of the Parliament and the official systems of the various government agencies.¹⁶³ During the seven months of its existence the Parliament enacted no law save several concerning parliamentary procedure.

Financial Powers.—In the financial field, the Council had the power to pass on (a) budgets, (b) laws of taxation, currency, and weights and measures for the whole country, and (c) measures for the calling of public loans and for concluding contracts affecting the National Treasury.¹⁶⁴ Since no government activities could be dissociated from finance, the Council by exercising this very power should have been able to control the administration. But in practice it could not do so, as no budget was ever made. Hence the Council had no opportunity to control the administration by controlling the finance.

Power to Ratify the Appointment of Officials.—The Council's ratification was not required for the appointment of all officials; it was needed only in the cases of members of the Cabinet, ambassadors, and ministers. Since the merits and effects of this provision have been discussed previously in another connection, suffice it to say that the authority of the Council was, perhaps, in no other place more strongly asserted than in this field.

Diplomatic Powers.—The Council was not empowered to conduct the diplomatic relations of the country; it was only to check the conduct of these relations by the executive branch of government. Thus it had the power to concur with the President in declaring war, making peace, and concluding treaties.¹⁶⁵ In exercising these powers, a majority vote was required.

Advisory Powers.—According to the wording of the Provisional Constitution, it was the Council's function or duty, rather than a power, to reply to inquiries from the government.¹⁶⁶ In practice, neither the President or the Cabinet had showed any slightest interest in the opinions of the Council on matters of importance.

Power to Receive and Consider Petitions from Citizens.—The Provisional Constitution gave the Council only the power to receive and consider petitions from citizens, but did not stipulate the procedure through which petitions could be received and considered. According to the Law Governing the National Council, petitions would not be received unless upon the recommendation of three members of the Council.¹⁶⁷ After being received, a petition was to be referred to a com-

mittee for examination; and the committee might return the petition to the members of the Council who had recommended it, if the petition papers were found not to be in due form.¹⁶⁸ The members in charge of petitions from citizens were required to make a report once a week to the Council on the gist of petitions received; either the committee to which a petition had been referred for examination or more than ten members of the Council might demand that the petition be considered at the meetings of the Council.¹⁶⁹ Only individual citizens and legally organized institutions had the right to tender petitions.¹⁷⁰ Petitions which would insult either the government or the Council itself, or would interfere with the judicial and administrative decisions, were also not to be received by the Council.¹⁷¹ The same treatment was, finally, applicable to the petitions calling for the revision of the Provisional Constitution.¹⁷²

Power to Make Suggestions to the Government.—According to Section 8, Article 19 of the Provisional Constitution, the Council might make suggestions to the government not only on legal but also on other matters. But such measures could only be jointly introduced by at least five members of the Council; and after being passed by a majority vote, the measures were to be immediately transmitted to the government.¹⁷³ If the latter found that it was unable to accept the suggestion, no member was henceforth allowed to introduce the same measure in the Council.¹⁷⁴ Thus the Council's suggestions were not binding upon the government.

Power to Interpellate.—The power to question formally the members of the Cabinet on their conduct and to insist that they be present in the Council and make replies thereto was given to the Council by the Provisional Constitution.¹⁷⁵ But such an interpellation could only be introduced in the Council by a joint motion of ten or more members. The Council was to submit it to the government for reply after a motion was so made.¹⁷⁶ In submitting an interpellation to the government, the Council might further fix a maximum period within which the government should give its answer.¹⁷⁷ In case the government made written replies which failed to satisfy those who initiated the interpellation, the Council could demand that members of the Cabinet appear personally, within a certain period, to answer questions. If they were unable to do so, they could send representatives for that purpose.¹⁷⁸

Indeed, if the Council's power to interpellate had been wisely used and scrupulously respected by the administration, it would have provided a method of bringing before the Coun-

cil any act or omission by the executive departments, and of turning a searchlight upon every corner of the public service. It would have helped greatly to keep the administration of the country up to the mark, and to safeguard against negligent or arbitrary conduct or the growth of that bureaucratic arrogance which had always been deeply rooted in China. Unfortunately, the opportunity was lost. While questions addressed to the government by members of the Council were not always intelligent, the ministers seem to have had the habit of showing contempt for the Council, either by refusing to answer altogether on the pretext that public safety would be endangered or by giving evasive and ambiguous answers. Since no opportunity for passing judgment upon the ministers was afforded except by impeachment, which was burdensome or, to be more accurate, practically impossible, interpellation never proved to be an effective means for collective censure of an executive act by the Council. This was fully illustrated by the interpellations concerning the summary execution of General Chang Cheng-wu in the fall of 1912.¹⁷⁹

Power to Investigate.—Investigations aimed at finding out facts as legislative references were not included in this category of power. Under this heading, it meant that the Council could insist the government investigate any alleged bribery and infringement of laws by officials.¹⁸⁰ Since investigations thus initiated were to be conducted by the administration, there was also plenty of room for that very body to set the Council's objectives at naught.

Power to Impeach.—In spite of the fact that the Provisional Constitution was intended to provide a cabinet form of government, it did not give, as already mentioned, the legislature the power to cast a vote of lack of confidence in the administration. Instead, it provided that more than twenty members of the Council might jointly make a motion calling for the impeachment of the President for high treason.¹⁸¹ After this motion had been passed by a majority vote of three-fourths of the quorum consisting of more than four-fifths of the total number of the members, the case was immediately to be submitted to the Supreme Court, which should, within five days, elect nine judges to constitute a special court to conduct the trial.¹⁸²

It was also provided that more than ten members of the Council might jointly make a motion calling for the impeachment of members of the Cabinet for failure to perform their official duties or for violation of the law.¹⁸³ After the motion had been passed by a majority vote of two-thirds of the

quorum consisting of over three-fourths of the total number of the members, the ministers concerned were to be removed from office by the President, but the President's veto power could also be applied to the Council's measures impeaching members of the Cabinet.¹⁸⁴ Consequently, the President might keep them in office by having a vote of one-third of the ordinary quorum of the Council upholding his veto. Since there were many tiny parties in the Council and no one was ever in a position to control the situation, throughout the Council's history one witnessed, therefore, only frequent failures of impeachment efforts due to lack of a necessary quorum. In addition to other reasons, this alone rendered the Council completely impotent to control the administration.

Power to Concur in the Declaration of a General Amnesty.—The declaration of a general amnesty was to be made by the President, but in so doing, the concurrence of the National Council was required.

Decisions of the Council were not to be directly addressed to the people.¹⁸⁵ Instead, they were to be promulgated by the President, who could, of course, refuse to do so if his veto were not overridden by a vote of two-thirds of the quorum of the Council.

Besides the above powers, the Council also had a constituent function. According to Article 29 of the Provisional Constitution, the Provisional President and Vice-President should be elected by it. In view of the fact that both the electoral procedure and the actual elections have been discussed before, no further elaboration is needed here.

THE PARLIAMENT

As mentioned before, the National Council was only to act as the nation's legislative organ until the convocation of a parliament. According to Article 53 of the Provisional Constitution, a parliament should be convened by the President within ten months after the promulgation of the Provisional Constitution itself. Since that instrument was promulgated on March 11, 1912, a Parliament should have been in existence before January 11, 1913. But because the National Council failed to enact the Laws governing the organization of the Parliament and the electoral procedures in due time, the Parliament was not assembled until April 8, 1913.

The Composition of the Parliament

The Law on the Organization of the Parliament provided a bicameral parliament consisting of a senate and a house

of representatives.¹⁸⁶ The Senate was composed of 274 members chosen by the provincial assemblies or equivalent bodies of the provinces and dependencies. Representation of the Central Educational Society and the overseas Chinese was also provided. Special attention is called to the fact that while the dependencies, the Central Educational Society, and the overseas Chinese were to send different numbers of senators, the various provinces had the right of equal representation in the upper house, each having ten seats there.¹⁸⁷ Although the latter provision was obviously an imitation of the principles applied to the composition of the American Senate, it also showed, to some extent, the strong tendency toward localism when the provision was made. The senators, who should possess the necessary qualifications for election as members of the House of Representatives, and were to be thirty years of age or more, were to serve for six years, one third of the members retiring every two years.¹⁸⁸

The House of Representatives was composed of 596 members elected by the electoral colleges, which were, in turn, chosen by the people possessing certain qualifications in different localities.¹⁸⁹ Unlike the Senate, the number of members of the House of Representatives which each locality should send was approximately proportional to its respective population. The representatives, who were required to be Chinese male citizens and to have attained the age of twenty-five years without being disqualified for one reason or another, were to serve for a term of three years.¹⁹⁰

From the above, one can see that neither the senators nor the Representatives were directly elected by the people and that the suffrage was limited.¹⁹¹ However, the elections which took place in December, 1912, and January, 1913, have been regarded by many as the only ones of the kind that nearly expressed the real sentiment of the people in China. The fact that members of the Parliament failed to perform their duties satisfactorily in later years should not be attributed to the way in which they were elected; other elements such as the impossibility of supervision by their constituencies after election and unfavorable political environments in China were really responsible.¹⁹²

Unlike the National Council, members of the Parliament were each paid a salary of \$5000 (Chinese currency) per year, together with allowance for travelling expenses from their constituencies to the Capital.¹⁹³

As in the National Council, there were a Speaker, a Deputy-Speaker, a Committee of the Whole, several standing com-

mittees, and a number of select committees in each of the two houses of the Parliament. For practical purposes, these officers and organs were similarly appointed and had functions similar to those in the National Council. The only marked differences were that there were more standing committees in each of the two Houses of the Parliament than the National Council had possessed,¹⁹⁴ and the jurisdictions of the various committees in the Parliament also appears to have been more scientifically adjusted.

As for the political complexion of the Parliament, fluidity of grouping was the main feature. It is to be noted that during the parliamentary election, only four parties joined the contest in the various constituencies; the Kuomintang, the Kung-ho Tang (the Republican Party), the T'ung-i Tang (the United Party), and the Min-chu Tang (the Democratic Party). When the Parliament met in Peking in April 1913, the seats in the two houses were distributed as follows: (1) the Kuomintang had about 400; (2) the Kung-ho Tang had less than 200; and (3) the T'ung-i Tang and the Min-chu Tang respectively had less than 100.¹⁹⁵ Thus the Kuomintang was the most powerful party in the Parliament. To compete with it, the three other parties were, therefore, amalgamated under the manipulation of President Yüan Shih-k'ai in May, 1913, and the name selected for the new combination was the Chin-pu Tang (the Progressive Party).

Politically, the Chin-pu Tang tended to favor functional centralism and was willing to give the President more power. Consequently, it supported the administration of the day. On the other hand, the Kuomintang insisted upon decentralism and wanted to keep the President solely as a figurehead. Thus it remained the enemy of the administration just as it had been in the National Council.

Numerically, even after the formation of the Chin-pu Tang, the Kuomintang was still the majority party in the Parliament. Although it had about the same strength as the Chin-pu Tang in the House of Representatives, its members outnumbered their opponents in the Senate.

Theoretically speaking, the existence of two major political parties at this time in China should have laid a good foundation for the smooth operation of a cabinet government. Unfortunately, this was just an illusion. In the first place, with the exception of the T'ung-mêng Hui descendants in the Kuomintang (i.e., Sun Yat-sen's loyal followers), those who entered into parties were, from the outset, not working to realize any program of national interest, but to gain personal

advantages. The formation and warfare of parties were not, therefore, based upon a real difference of opinion about the needs of the community as a whole, but for private gain, either of individuals or of factions. They had no convinced following among the masses. Politics under such circumstances was bound to degenerate into a scramble of self-seekers.

In the second place, while many leaders of the Kuomintang at the time called for a Cabinet composed of party politicians selected from among the members of that party or group of parties which had a majority or could secure a majority in the Parliament so as to integrate the operations of government and legislature, still cabinets were frequently formed by men either affiliated with the parliament minority or without any parliamentary connection at all. As a result, the presence or absence of two major parties had little to do with the actual control of government.

Under these conditions, the newly established two-party system quickly disintegrated. Schism occurred first in the ranks of the Kuomintang. About six small parties were organized by deserters from that party.¹⁹⁶ Thus the strength of the Kuomintang was greatly diminished. Until the eve of the so-called Second Revolution, only about one hundred and fifty members of the Parliament still belonged to it.

Shortly, disunity also appeared in the Chin-pu Tang. In June 1913, more than forty former members of the T'ung-i Tang (the United Party) and the Min Shê (the People's Society) left the Chin-pu Tang, and revived the Kung-ho Tang (the Republican Party).¹⁹⁷ When Hsiung Hsi-ling took over the premiership after the Second Revolution, some sort of coöperation was developed between the moderate Kuomintang members and the Chin-pu Tang elements in the Parliament. Preparations were made, therefore, by President Yüan Shih-k'ai's trusted friend Liang Shih-i to start a new party within the Parliament in order to check all unfavorable political combinations that might appear. Accordingly, the Kung-min Tang (the Citizens' Party) was formed. It quickly became the third largest political group in the Parliament.

Just about ten days before President Yüan ordered the disbandment of the Kuomintang, several eminent members of the Kuomintang in the Parliament repudiated their original political affiliation in view of the possible danger that might otherwise confront them, and initiated another party with a number of former members of the Chin-pu Tang. Their party was named the Min-hsien Tang (the Constitutionalist Democratic Party).¹⁹⁸

Before the Min-hsien Tang was organized, the several small parties which had previously split from the Kuomintang and a few members of the Chin-pu Tang also constituted a new political force named the Ta-chung Tang (the Party of the Great China). Thus at the time when the Parliament was about to be dissolved, there were five parties in the legislative body. The Chin-pu Tang and the Kung-min Tang were, generally speaking, in alliance with President Yüan Shih-k'ai. The Kuomintang and the Min-hsien Tang were in opposition to the Government, whereas the Ta-chung Tang had no definite attitude.¹⁹⁹

The Powers and Functions of the Parliament

As mentioned before, although a permanent Constitution for the Republic had not yet been enacted, the Parliament was to assume the powers and duties of the National Council.²⁰⁰ But whereas the National Council was an unicameral body, the Parliament was composed of two houses, each chamber acting separately, its decision being by the concurrence of both houses²⁰¹ except on the following matters:²⁰² (1) suggestions to the government, (2) interpellations, (3) demands for the investigation of officials on bribery and illegal activities cases, (4) replies to inquiries from the government, (5) consideration of petitions of citizens, (6) authorization of the arrest of members of the Parliament, and (7) enactment of rules governing the respective houses. Measures defeated in one house were not allowed to be again introduced in either house of the Parliament during the same session. Nor could a bill be simultaneously laid on the tables of the two houses. However, no discrimination was made with regard to which house bills should be first referred to, except that those on budgets were required to be first submitted to the House of Representatives.

The fact that the two houses of the Parliament were put practically on equal footing with coördinate powers, was, indeed, theoretically undesirable. It is to be noted that, at the time, China theoretically had a cabinet form of government. The Cabinet was responsible to the Parliament. If the two houses of the Parliament were equal in authority, then the Cabinet had two masters to serve at the same time. Without the concurrent consent of the two houses, it would not be able to take over office. Without this concurrent support, the Cabinet would be similarly unable to get things done. It perhaps could please one of the houses. But it would find that it was difficult to please both of them on all issues and on all

occasions. Speaking of the failure of the Cabinet government in France of the Third Republic, President Lowell once indicated that the fact that the French Senate had considerable influence over the fate of the Cabinet was one of the most important responsible factors. The fact that the Chinese Cabinet seems not to have been bothered by being responsible to two houses was not an indication of the falsity of the general theory. It was rather due to certain special circumstances, including the same political complexion of the two houses, the control of the Cabinet by an ambitious and powerful president instead of by the Parliament, and the short existence of the Parliament itself.

In addition to having the powers and duties of the ex-National Council, the first Parliament was further charged with the task of drafting the permanent constitution.²⁰³ An account of its work thereon will be made later in connection with the nullification of the Provisional Constitution.

The Procedures of the Parliament

The two houses of the Parliament were required to hold joint meetings at the opening and adjournment of each session, although they sat separately in transaction of business at all times. The ordinary duration of each session was four months, which could, however, be prolonged when that was deemed necessary. During a session, the houses might, upon mutual agreement, have a short recess of not more than fifteen days. Lacking such agreement, a house could have a recess of less than seven days. When a house was in recess, the Speaker could call back its members to the chamber for action on urgent matters. Unlike the National Council, the date on which the Parliament should open its session was to be announced by the President. Thus the administration was, at least in theory, in a position to control the legislature. But on the other hand, it also offered the opportunity for an administration on certain occasions not to convene the Parliament on time so as to free itself from legislative supervision or interference. With a number of exceptions, the quorum of each house was the majority of its membership.

The Speaker of each house was to prepare the agenda, the measures submitted by the administration being given preference. On special occasions, the Speaker, with the consent of the house, might alter the agenda even during proceedings. Bills could become laws or statutes of the land after they had been passed by both houses and received presidential approval.²⁰⁴ There were two kinds of bills, government and private, the

former being introduced by the administration, and the latter by private members of the Parliament. But unlike the British system, private members' bills could deal with the same matters as government bills. It was required that bills and other measures should be presented to the Speaker prior to the proceedings. With the exception of bills amending budgets, three senators might propose a measure while the Senate was in session, and ten representatives while the lower house was in session.

All law bills, measures on finance, and other important matters must go through the three reading stages before being enacted unless the houses decided otherwise at the request either of the administration, or of more than ten members of the Parliament. Roughly speaking, the first reading was by title only. At this stage the government organ or members of the Parliament proposing the legislation might send representatives or come themselves to make explanation. Next came the committee stage. When the committee had made its report on the bill, the house concerned was to decide whether to proceed with the second reading. The second reading was by articles. Amendments were in order. The second reading was the most important and substantial. The third reading was generally confined to textual corrections and was of no importance.

When a bill passed its third reading in one house, it was to be sent to the other chamber for concurrence. The bill had now to pass a similar number of stages there. If there was no disagreement, the bill was now ready for the presidential signature. The President now could either give his assent or veto the measure. If he wished to veto it, he should, within ten days after he received such a measure, return it with stated reasons to the Parliament for reconsideration. If the same measure should again be passed by a two-thirds vote in each house of the Parliament, the President was to promulgate and execute it. Otherwise, the bill was discarded.

If the other chamber amended the bill, it should be returned to the house from which it came for the consideration of the amendments. If the original house agreed with the amendments, the bill was sent to the President for signature. If the original chamber could not agree to these amendments, a conference committee consisting of an equal number of members from the two houses was to be appointed to secure an agreement on the bill. The decision of the committee was then either to be accepted completely or to be rejected entirely by the two houses.²⁰⁵

THE JUDICIAL SYSTEM

The judicial system of China at this time was in a state of transition. No new civil, criminal, or commercial codes had been promulgated, though their compilation was being assiduously undertaken with the assistance of Japanese experts. In the meantime the old laws of the Manchu court, which had been enacted during the years 1902 to 1911 for the purpose of Westernizing the Chinese judicial system, were declared by a presidential decree on March 10, 1912, to be temporarily the law of the land, except in so far as they had been abrogated or modified. The organization of the courts was, therefore, also based upon the related Imperial Code.²⁰⁶

Generally speaking, the judicial system of China in the early years of the Republic had two important features: in the first place, the justiciable disputes arising out of administrative acts were settled by a court independent from both the ordinary law tribunals and the administrative officials. The adoption of a separate administrative adjudication procedure was decided upon in the late days of the Manchu Dynasty, when political and legal reforms were being considered. The Republic endorsed this decision by stipulating, in the Provisional Constitution, that the ordinary law courts should try civil and criminal cases, but cases involving administrative affairs should be dealt with according to special laws.²⁰⁷ However, the Administrative Court was not established until 1914 when the Provisional Constitution had already been replaced by the Constitutional Compact.²⁰⁸

In the second place, there were four tiers of ordinary courts, with a judicial procedure, both civil and criminal, generally requiring three trials. The Courts of First Instance were independent tribunals in which the judicial power was exercised by one judge. Minor criminal and civil cases were within their jurisdiction. Theoretically, there was to be one for each county (hsien). But at the end of 1913 there were only 197 such courts in the whole country, with 175 waiting for establishment. In the counties where no such court was found, either a judicial official was attached to the county government, or the magistrate personally exercised judicial as well as administrative functions.²⁰⁹

The Metropolitan Courts, established in each administrative area (fu), which dealt with ordinary civil and criminal cases and appeals from Courts of First Instance by one or three judges as the case might be, were tribunals of both

first and second instance. In fact, there were only 113 such courts at the end of 1913.²¹⁰

The High Courts, established in each provincial capital, consisting of one civil and one criminal branch, were courts of second and third instance. By the end of 1913, all but three provinces had such courts.²¹¹

The highest tribunal of the land was the Supreme Court in Peking. Since its composition and procedure will be described more fully under a separate heading below, suffice it to say that it had jurisdiction in the following matters: (1) appeals from the High Courts, and (2) cases which according to law were under its exclusive jurisdiction.

The system of four tiers of courts with a judicial procedure permitting three trials was never altered from 1912 to 1928 while the central government of China was in Peking. Even during the early years of the Kuomintang regime in Nanking, this system was still adhered to. It was not replaced by a system of only three tiers of courts with a judicial procedure permitting the same number of trials until October 1932 when a new Law on the Organization of the Ordinary Courts was promulgated by the National Government.

Having pictured the general features of the judicial system of the Republic, we are in a position to look into the judicial system of the central government in more detail.

The Supreme Court

As already mentioned, the Supreme Court was the highest Court in the land.²¹² It had a president and a number of judges, divided into civil and criminal chambers. Each chamber was headed by a president who was himself a judge.

The President of the Supreme Court had the duty of supervising the Court's administration, and the power to interpret laws, but was not allowed to interfere with judges during the trial of cases. While the central government was in Peking, the Supreme Court was somewhat fortunate in its presidents. For most of this period, it was presided over by men who were either legal scholars or experienced judges. The fact that the Supreme Court was not so obscure as its counterpart under the Kuomintang regime in later years was, to some extent, due to this happy accident.²¹³ The other judges of the Supreme Court were also, on the whole, competent and serious about their duties, although they never had the distinction and prestige of the justices of the Supreme Court of the United States. They did not have the authority to interpret the Constitution. But their decisions on ordinary legal

cases were seriously regarded by the courts below and the legal profession, if not by the public in general.

Trials before the Supreme Court were conducted in each case by a chamber of five judges, one of them being the presiding judge. When a case was brought to it, if the interpretation of laws was in question, a special civil or criminal court, or a combination of both might be convened to decide the whole case. Urgent cases and cases of supreme importance might be tried in a High Court, or a Metropolitan Court, in which a branch of the Supreme Court was to be temporarily opened. In such cases the President of the Supreme Court was to send two or more of his colleagues and to order the High Court to appoint not more than two judges to deal with the case. The President of the Supreme Court also had the power to direct a High Court or a Metropolitan Court to conduct a preliminary examination for the Supreme Court itself. In places at great distance from Peking, a regular branch of the Supreme Court might also be formed within a High Court. Such branches could consist of only one criminal and one civil chamber. Judges for a branch of the court, in addition to the regular judges, might be chosen from the judges of High Courts, ad interim. One of the judges of the Branch Court was to be the presiding and supervising judge. When a case was heard in a Branch Court, and there was still a difference of opinion, the case might be referred to the Supreme Court in Peking, which was to organize a special tribunal to deliver a judgment. In such cases the judges of the Branch Court must transmit their opinion to the court in Peking. When the court in Peking gave its opinion on cases heard in a lower court, its opinion had to be acted upon.

There was great similarity between civil and criminal procedures in China. While the trials at the Court of First Instance and on first appeal were concerned with both facts and law, at the third trial, which invariably took place before the Supreme Court, only questions of law and of whether the lower courts had strictly followed the proper procedure were usually debated and decided. In other words, the Supreme Court did not itself inquire into the facts of a case. Similarly, while in the trials at the court of first instance and at the intermediate appellate court oral arguments were in order, at the Supreme Court only written arguments were generally admitted, though the court might, if it thought fit, also admit oral ones. The opinion of the majority of the chamber in charge of a case was to be taken in framing the judgment of the Court. The mean was to be taken in ques-

tions of amount upon which no majority decision was arrived at.

The Office of the Procurator-General

Since China was about to modernize her legal system, there was a controversy as to whether the state or the injured person should be responsible for the prosecution of the criminal. This controversy was, however, resolved in favor of the former during the Peking regime. Thus during the Peking days the procurators were almost as numerous as the judges and were organized exactly like the judges. For every court there was a procurator's office, and the judges and the procurators were equal in rank. Theoretically, it was for the procurators to detect and to prosecute crimes, the plaintiff occupying only the position of a witness.

For the central government, these duties were performed by the Office of the Procurator-General. In addition to the Procurator-General, two or more procurators were to be appointed. The Office of the Procurator-General was, like the procurator's office of lower levels, to exercise its powers independently of the court.

Generally speaking, the judiciary in China during the early period of the Republic enjoyed a favorable reputation for the stability and independence of action of its personnel, in comparison with the civil administration. It was particularly so in the central government. But there were many difficulties which prevented the judicial system of China during this period from becoming more satisfactory. In the first place, the increasing disorder in the nation with a corresponding decrease in the authority of the central government made judicial uniformity almost impossible. The instability of the tenure of ministerial office also made a consistent legislative policy on judicial administration difficult. Another important factor which militated against the normal administration of justice in China in those days was the interference with the departments of civil government by the military leaders. The military interference with the civil administration extended to the judiciary, so that the independence of this branch of the government was endangered. Irregularities in this respect usually occurred under the guise of the application of martial law, which, however, was declared usually without regard to legal provisions on the subject. In other instances, there was simply an open assumption of authority. Another important factor was the control by the military of the finance of the government, so that the courts were dependent upon

the military for financial support. By virtue of Chinese law itself, the legal position of the military placed them outside the jurisdiction of the ordinary courts, while their powers, in fact, often placed them outside the jurisdiction of all courts. This immunity was liable to be extended to the friends of the military and to the commercial firms and organizations in which they were interested. Ample evidence of this situation appears from the fact that the military were constantly committing crimes which went unpunished, for it was generally difficult for aggrieved civilians to obtain any redress from military authorities commanding their own armies when such redress must be sought in military courts controlled by these authorities.²¹⁴

Another factor was the lack of a sufficient number of properly organized courts. The fact that in most cases the magistrates had to personally exercise both administrative and judicial powers made judicial independence at the local level almost impossible of attainment even if there had been no interference from the militarists. Meanwhile, it was a common knowledge that many magistrates' courts often used torture and other methods, which had been prohibited by the new codes in extracting confessions from criminal suspects. This and many other illegal practices certainly had the effect of compromising the reputation of the judiciary as a whole.

Another fact was that there were not enough law schools in China to turn out qualified law graduates in sufficient numbers to serve in the regular courts that had been established and thus to improve the quality of the personnel.

Still another factor was the interference in the Chinese judicial administration caused by the existence of extraterritoriality. The principle of extraterritoriality, by which foreigners when they were defendants in civil and criminal cases were subject solely to the jurisdiction of officials of their own nationality, had been accepted by China from very early days of intercourse with the outside world.²¹⁵ But it had not been clearly laid down until the conclusion of the Sino-American Treaty of 1844 and the Anglo-Chinese Treaty of Tientsin of 1858. Since the merits and demerits of the existence of extraterritoriality in China have been fully discussed and argued in various international conferences,²¹⁶ it would serve no useful purpose to reiterate the case here.²¹⁷ Suffice it for our purpose to say that the existence of extraterritoriality in China had made the Chinese judicial authority unable to have complete control over persons in China and that its jurisdiction was thereby impaired.

THE NULLIFICATION OF
THE PROVISIONAL CONSTITUTION

The Provisional Constitution was nullified by the promulgation of the Constitutional Compact on May 1, 1914, but several unconstitutional acts on the part of President Yüan Shih-k'ai had occurred prior to that date. On the surface the nullification of the Provisional Constitution had been caused primarily by the controversy between the legislative and the executive branches of the government. If one looks more deeply into the problem, the underlying cause was the struggle over the control of the government between the former revolutionary elements, represented by the Kuomintang, and the remnants of the Manchu military and bureaucratic forces, headed by President Yüan Shih-k'ai. As already mentioned, the establishment of the government in Peking after the Revolution was a compromise between the revolutionaries and Yüan Shih-k'ai's forces. Since both sides were forced to reach a compromise unacceptable to either, neither of them intended, from the outset, to abide by this agreement, once the circumstances changes. Nevertheless, the revolutionaries enacted the Provisional Constitution in the hope that after conferring on Yüan Shih-k'ai the dignity of the presidency and then, by constitutional provisions, stripping that high office of all real weight in the government, they would be able to control the situation.

This control was to be accomplished by vesting all legislative powers in the National Council, which was to be replaced later by the Parliament; by giving it a control over the finances of the State and supervision over the administration; and by the creation of a Cabinet which, while appointed by the President, must be acceptable to the legislature. But since Yüan Shih-k'ai was a man of ambition and influence, although he might observe the legal limitations put upon him for a while for the sake of expediency, yet he certainly would not restrain himself forever.

Indeed, just after the Provisional Constitution was enacted, President Yüan made the attempt to dominate the personnel of the first Cabinet. This was countered by the National Council's refusal to confirm Liang Ju-hao, the President's intimate friend, as Minister of Communications. After that time clashes frequently occurred between the President and the Council. The controversy over the formation of Lu Chêng-hsiang's Cabinet proved, however, to be the most serious one. Briefly, after T'ang Shao-i's resignation from the

premiership in June, 1912, the T'ung-mêng Hui members of the National Council desired to have a Cabinet with its members being chosen entirely from one party, whereas their Kung-ho Tang colleagues wanted to have a Cabinet without party affiliation.²¹⁸ The latter's view was preferred by President Yüan and the veteran diplomat Lu Chêng-hsiang was nominated for the premiership. When the National Council was considering the nomination, the T'ung-mêng Hui members bitterly opposed Mr. Lu. But Mr. Lu was eventually confirmed by the Council with the combined backing of the Kung-ho Tang and the T'ung-i Kung-ho Tang. Shortly afterward Premier Lu personally appeared at the floor of the Council to ask the latter to confirm the appointment of six other members of his Cabinet. He also took the opportunity to announce his policies to the law-makers. Because his speech created a very bad impression in the minds of many legislators, the T'ung-i Kung-ho Tang members of the Council now turned their back on Mr. Lu and voted with their T'ung-mêng Hui colleagues in rejecting the appointment of the six persons. Since the six had actually been named by President Yüan, the Council's rejection was not only a manifestation of lack of confidence on Premier Lu, but also a rebuff to the President. Letters denouncing the Council poured in from many military units over which the President had complete control. The relationship between the President and the Council worsened day by day. Amid the efforts at denunciation and intimidation, President Yüan nominated six other persons to fill the Cabinet posts, and, with one exception, the nominees were confirmed by the Council at this time.²¹⁹

The antagonism between President Yüan Shih-k'ai and the revolutionaries, however, was never irreconcilable during the life of the Council. The Parliament which met in April, 1913, presented a much more serious situation. For it met in a very uncertain temper owing to an unprecedentedly hostile attitude of the Kuomintang toward the government. This opposition had its roots in the murder of Sung Chiao-jên on March 21, 1913 at the Shanghai railway station by a youth whose action was regarded as having been instigated by the President.²²⁰ Unfriendly scenes took place as early as at the opening of the Parliament. It was first proposed that the Provisional President should open the Parliament in person, but it was intimated to him that in the opinion of the Kuomintang members he could attend the function only as a private citizen. The President therefore abstained from attending, but sent his secretary-general, Liang Shih-i, with a message of

greeting and good will. When the members of the two houses met in joint session for the formal opening on April 8, 1913, the President's secretary presented, but was not permitted to read, the Chief Executive's message.

Shortly thereafter, the Quintuple Loan was brought up for discussion in the Senate on April 28,²²¹ when a demand for the attendance of the Cabinet members at the session on the same day was addressed to the government. On the failure of the ministers to attend, the Senate, by a majority vote, declared, on the next day, that the loan was null and void, as it had not been submitted to the Parliament for approval prior to the signing of the contract.²²²

The Quintuple Loan case monopolized attention throughout May, and was responsible for many stormy sessions in both chambers.²²³ Feeling between the Kuomintang and other parties in the Senate became so heated that for more than a week business was interrupted for want of a quorum, the government's supporters having abstained from attendance. In the meantime, the government and the Parliament were bombarded with telegrams from the provinces supporting or denouncing the signature of the loan contract. But the Kuomintang, or the majority of the Parliament, at last lost the battle with President Yüan, who was regarded by the foreign powers as the "strong man" of the nation. Their representatives chose to deal with him in order to ensure security for an investment rather than to strengthen the cause of Parliamentary government. They ignored the fact that the conclusion of the loan contract prior to the approval of the Chinese Parliament was an unconstitutional act on the part of the Chinese government.

Strengthened by the loan, the President proceeded to consolidate his power. The Parliament persistently struggled against this, opposing all suggestions, whether good or bad, emanating from the President. By doing this, instead of attempting to develop a constructive program of its own, the Parliament gained the reputation of being a purely obstructive body, active only in interfering with the President, who was, whether for his own benefit or for that of the nation, attempting to restore peace and order in the country. In spite of this opposition, the President gradually gained the upper hand in the provinces. He used every possible means to assert and consolidate his authority. One after another, the commanders of troops in central and southern China were replaced with those faithful to him.

Unable to check the President in Parliament, the opposition

resorted to violence. However, the Second Revolution in the summer of 1913, immediately caused by the removal of three prominent members of the Kuomintang from the military governorships of Kiangsi and Anhwei,²²⁴ merely served to exhibit the weakness of the opposition and the strength of the President. The government's troops suppressed the rebels without difficulty. Although a number of extreme Kuomintang parliamentarians had fled to the South, the Parliament continued, however, to hold its sessions in Peking. But it was unable to render any service to the country. On the contrary, there were angry scenes in both houses. These were stimulated by such episodes as the arrest by the military authorities of several members of the Parliament without permission of the houses concerned, and the summary execution of a representative from Kwangtung by the military authorities in Tientsin. Sometimes, members of the Parliament even threatened to suspend their session unless the government gave assurances that the privileges of its members would be respected.

The Parliament's hostile attitude toward the government was indicated further by its refusal to consider the budget for the first six months of 1913, presented by the government at the end of the period it was intended to cover. Although this failed to prevent the government from spending money to carry out its programs, the action did put it in an embarrassing position in the eyes of the public and the foreign powers. Since President Yüan had always considered himself to be the controlling figure in the government and had practically dominated military and financial affairs of the nation since he was recalled from retirement by the Manchu court in 1911, he could hardly stand the hurly-burly of the Parliament. It was understandable that he lost his head. After being used to the deference of flattering subordinates, he was pestered by fuss and confounded by invective. He hated the Parliament as naturally as the Parliament hated him.

But Yüan Shih-k'ai was not so stupid as to destroy parliamentary opposition before the vital issue of the framing and adoption of the permanent Constitution had been settled with the Kuomintang. As early as February, 1913, a memorial had been submitted by many of the military governors, proposing that the committee to draft the Constitution should consist of eight representatives appointed by the Parliament, six from the Cabinet, two each by the military governor of every province, and one each by the provincial assemblies.

The proposal was immediately challenged by the Kuomintang members of the National Council, who summarily rejected the bill and claimed that the Provisional Constitution had already vested the power exclusively in the legislature.

Soon after the convocation of the Parliament in April, a committee of sixty, composed of equal numbers from the Senate and the House, was elected to draft the Constitution. The Kuomintang members predominated in this committee, which sat behind closed doors at the Temple of Heaven in Peking and framed a draft constitution consisting of 113 articles commonly called the "Temple of Heaven Draft."²²⁵ This document, like the Provisional Constitution, vested supreme power in the legislature, and the executive branch was hampered with limitations uncondusive to efficient and stable government.

While the committee was in the midst of its work, President Yüan was fully informed as to the provisions of the draft constitution the committee was producing. But prior to taking open issue with the hostile Parliament, he decided to have himself elected permanent President, so that when the Parliament was abolished, he would be recognized master of China. Consequently, he urged, bribed, and cajoled the Parliament into passing the section of the draft constitution dealing with the electoral procedure of the President in advance of completion of the entire instrument,²²⁶ and the election took place on October 6. On the third ballot, under various threats, Yüan Shih-k'ai was elected by the necessary majority vote. On the next day, Li Yüan-hung was elected Vice-President. The inauguration of the President took place on October 10.

Having secured the presidential chair for a term of five years, Yüan Shih-k'ai took action. The first step was his proposal to the Parliament to amend the Provisional Constitution so that those restrictions which hampered his activities could be immediately removed. This proposal was rejected by the Parliament on the ground that a permanent constitution was to be adopted in the near future.

After failing to secure amendment of the Provisional Constitution, Yüan again made several attempts to have his constitutional principles inserted into the permanent constitution while it was still in the hands of the drafting committee. The committee, however, disregarded his suggestions and flatly refused his "braintrusters" the right to participate in the discussions of the committee. The committee, realizing the serious situation, concluded its labors and hastily passed the Temple of Heaven Draft. Since the draft placed supreme

power in the legislature and imposed many limitations upon the executive branch, Yüan took strong exception to it. Before the draft could be adopted by the Parliament, Yüan asked the military governors and other high provincial officials for their opinion on it and for advice as to his action. The response was immediate. A flood of telegrams from the various governors poured in demanding the disbandment of the Kuomintang and the dismissal of the members of the Parliament who were affiliated with that party.²²⁷

Having assurance of the support of the military leaders of the provinces, Yüan, on November 4, ordered the dissolution of the Kuomintang on the ground that it was a seditious organization and also ordered that the credentials of the Kuomintang members of the Parliament be withdrawn. Since the presence of these members was necessary to constitute a quorum, this act immediately made the Parliament unable to do any business. Moreover, on January 10, 1914, Yüan illegally ordered the suspension of the right of membership of the non-Kuomintang members. Thus the Parliament was virtually dissolved, and the Temple of Heaven Draft never went into effect.

Having rendered the Parliament unable to act, Yüan Shih-k'ai actually became a dictator. But he was too astute not to have someone share the responsibility of his unconstitutional activities. Furthermore, he knew the value of clothing his absolute power in a constitutional garb. In consequence, an extraconstitutional body of his followers, known as the Political Conference was convened on December 26, 1913. Soon after its convocation, the Political Conference recommended the creation of the so-called Constitutional Compact Conference, composed of government appointees rather than elected representatives of the nation, for the amendment and revision of the Provisional Constitution. On March 18, 1914, the Constitutional Compact Conference was inaugurated. In less than seven weeks it completed its main work and drafted the Constitutional Compact.²²⁸ This was promulgated by Yüan on May 1, to supersede the Provisional Constitution. Hereafter, the machinery of the Chinese Government was readjusted.

It may be stated here that the people showed almost complete apathy to the change in government by raising no objection to the illegal dissolution of the Parliament. As Professor Harold M. Vinacke has observed, the idea that the Republic, and with it representative government, was founded upon an active popular desire and interest was shown to be

nothing more than a theory developed for revolutionary purposes.²²⁹ It is quite clear that the masses then still did not consider that government was their business. Officials had always ruled, and the people were not only unable but also unwilling to play a more active role in politics. Deprived of real support from the masses, those who were attempting to establish a democratic government faced a tremendous difficulty in a country where despite a republican revolution, the old bureaucracy and military establishments, personified by an ambitious and energetic President, were left intact. But even under such circumstances, better functioning of a democratic government would still have been possible had there been a healthy party system, an agreement to disagree among the political opponents, and a flexible and balanced constitution providing an avenue through which political deadlocks could be peacefully and smoothly solved. Unfortunately, none of these factors existed in China during the period just reviewed. One must say, therefore, that the failure of the government under the Provisional Constitution was due to both the socio-political conditions of the day and the mal-adjusted machinery of government.

Government under the Constitutional Compact

THE ENACTMENT OF THE CONSTITUTIONAL COMPACT

As has been mentioned before, the proposal to enact the Constitutional Compact was made by the Political Conference, so that a cursory survey of that Conference is essential to an understanding of this development.

The Political Conference

Shortly after Hsiung Hsi-lin took over the Premiership in the fall of 1913, his Cabinet formulated a comprehensive program of political reform, and submitted it to President Yüan Shih-k'ai.¹ Since the program's most important item was the design to diminish the authority of the provincial governments, President Yüan suggested that before taking any definite action thereon, the representatives of the provincial governments should be summoned to the capital for consultation. Thus an edict calling for an "Administrative Conference," was issued. While the edict was being issued, the forced dissolution of the Kuomintang and the suspension of its members from exercising parliamentary functions took place. For the purpose of receiving advice on the current political issues, President Yüan converted the Administrative Conference into the "Political Conference," composed of the following representatives: (1) two from each province, (2) eight appointed by the President, (3) two appointed by the Premier, (4) nineteen appointed by the various departments, the Supreme Court, and the Bureau for Mongolian and Tibetan Affairs, and (5) three from certain border areas.² This Conference was not representative of the people in the parliamentary sense, for its members were the appointees of the central and local governments.

Soon after the convocation of the conference, President Yüan submitted to it the memorial of Vice-President Li Yuan-hung and the various high officials of the provinces which called for the amendment of the Provisional Constitution and

the suspension of the remaining members of the Parliament.³ The conference responded that its members were in unanimous agreement with the Vice-President and the high provincial officials.⁴ The suspension of the entire membership of the Parliament was carried out by the President on January 10, 1913. But with regard to the amendment of the Provisional Constitution, the President was still unwilling to take the full responsibility himself as to what procedure should be followed. Consequently, he proceeded to ask the conference for further counsel. With full comprehension that the body itself was acting only as an advisory council to the President, the conference immediately recommended that he call into being a constitutional convention to undertake the task of the amendment and revision.⁵ Regulations for the establishment of such a convention, to be known as the "Constitutional Compact Conference" (Yüeh-fa Hui-i), were drawn up by the Political Conference, approved by the President, and promulgated by him on January 26, 1914.⁶

The Constitutional Compact Conference

The Constitutional Compact Conference was composed of fifty-six members, distributed as follows: four elected in Peking, two in each province, eight by Mongolia, Tibet, and Sinkiang, four by the Chamber of Commerce. The qualifications, both for eligibility to election and for participation in the election, were placed very high.⁷ Electors had to be citizens of thirty years of age or over. Additional qualifications carried the following limitations: high officials who had "a thorough knowledge of statecraft," or persons with the degree of "Chü-jên," or higher graduates who had accomplished "something in literature," or a college student who had studied more than three years and had obtained "a comprehensive understanding of the sciences," or who possessed property of at least \$10,000 in value and had done "something for the public welfare." The qualifications for membership in the Conference were: tenure in a high official post for at least five years with a "good record in administration," or a graduate of a law school or the holder of a degree higher than that of "Chü-jên" who had undertaken an "intensified study of legal and political sciences," or a well-known scholar who had written "practical and useful books."

From the above, it is clear that the qualifications both for the electors and the candidates were not only strictly limited but were also so ambiguous and flexible that there was enough room for the so-called Controllers of Election to discriminate

against those who could seemingly qualify by arbitrarily saying: "Certainly X is a high official or a holder of a certain degree, but he has not yet had 'a thorough knowledge of statecraft' or 'a comprehensive understanding of the sciences.'" Nor was this all. Full control over the election by the government was further guaranteed by several other provisions. First, for the sake of expediency, the Controller of Election in each province might ascertain only the names of the qualified electors who were residing at the place where the Controller himself resided. Thus only certain people living in the provincial capitals actually had the right to vote. Those who fortunately possessed the unusual qualifications but unfortunately lived outside the provincial capitals were excluded from voting just as were those who did not possess any qualifications in the first place. Secondly, the electors of the Mongolian and Tibetan Electoral Colleges and those of the Chambers of Commerce were confined to those who were residing in Peking. Thus the qualified electors who were in Mongolia and Tibet or in Chambers of Commerce located outside of Peking were equally disfranchised.

Moreover, the board which had been charged with the duty of examining the qualifications of the candidates was exclusively appointed by the President.⁸ Consequently, undesirable persons could always be debarred from candidacy. Even after having carefully selected the candidates, the government still had another means to check that the most acceptable were actually elected. This was made possible by requiring that the voting should be by signed ballots.⁹ In speaking of the composition of the Constitutional Compact Conference, Wang Shih-chieh and Ch'ien Tuan-shêng made this comment: In theory, while the members of the Constitutional Compact Conference seemed to have been elected, in practice, the so-called election was in no way different from an appointment; being so elected, the members of the Conference were nothing but the instruments of the Government.¹⁰ The comment is certainly not an exaggeration in view of the fact that not a single member of the Conference was chosen from President Yüan's political opposition, the Kuomintang, and that all the decisions of the Conference were invariably made by unanimous vote.

The Constitutional Compact Conference met on February 28, 1914, Sun Yü-chün and Shih Yü being elected Chairman and Deputy-Chairman. Two days later, President Yüan submitted to the conference a seven-plank program for amending the Provisional Constitution including: (1) the complete control of diplomatic relations by the President, (i.e., the President

could declare war, make peace, and conclude treaties without the consent of the legislature); (2) the complete control of the administrative system, the official regulations, and the appointment of members of the Cabinet and high diplomatic envoys by the President, (i.e., the President could do these things without the consent of the legislature); (3) the adoption of a presidential form of government; (4) the drafting of a permanent constitution by the President and the Council of State (Ts'an-chêng Yüan) and the adoption of the permanent constitution by a National Convention (Kuo-min Hui-i), with the President being given the right to promulgate the constitution; (5) the free exercise by the President of the powers to take away and restore rights of citizens; (6) the granting to the President of the power to issue emergency ordinances; and (7) the granting of the power to the President to take emergency measures on finance.¹¹

In less than seven weeks, the Conference completed its main work and drafted the "Constitutional Compact," based primarily upon the principles proposed by the President. It was promulgated by him on May 1, 1914, to supersede the Provisional Constitution.¹²

The Fundamental Characteristics of the Constitutional Compact

The most outstanding characteristics of the Constitutional Compact were that it eliminated the restrictions on the executive branch of the government and cut down the powers of the legislature. Instead of a system of ministerial responsibility as provided by the Provisional Constitution, the Compact adopted a system under which the President virtually held dictatorial powers. Unlike the situation under the so-called "presidential system," all powers over the administration were vested in the President, unlimited by any necessity to consider the wishes of other branches of the government. The President was put above, rather than being equal with, the legislature and judiciary.¹³

On the other hand, the Compact, like the General Plan and the Provisional Constitution, was silent on the relationship between the central and provincial governments. It is true that while the Compact was in force President Yüan was able to exert the authority of the central government to an extent without parallel until the Communist regime. His position, however, was based upon his personal prestige and military supremacy rather than upon any institutional stipulation. Whether this was due to negligence or reluctance on the part

of the framers of the Compact means little. The fact that the relationship between the central and provincial governments had not been legally established in any of the three fundamental laws of the nation which were enacted after the outbreak of the Revolution in 1911, offered a forewarning of possible future disunity of the nation.

THE PRESIDENT AND THE DEPARTMENTS

The Powers and Functions of the President

Under the Constitutional Compact, there was no discrepancy between legal provisions and political practice in connection with the powers and functions of the President. The President in reality was what the President appeared to be in law. He was charged with actual political responsibility. Indeed, the Constitutional Compact had been enacted in order to make him the real ruler of the country instead of a figure-head. As head of the nation who combined in himself all powers of government, he was responsible only to the "whole nation." In other words, except for the nation as a whole, no other agency of government could check and censure his actions. Neither was the "nation as a whole" really in a position to check and censure him. In the first place he was not elected by the "whole nation" directly.¹⁴ And in the second place, the people of the nation as a whole were never able to constitute a political organ which could supervise and control the President.¹⁵ Specifically, the President had the following powers:

The Power to Convoke, to Open, to Prorogue, to Close, and to Dissolve the Legislative Assembly (Li-fa Yüan).—According to Article 17 of the Compact, the President could freely and independently exercise all of these powers except that of dissolving the Legislative Assembly. To dissolve the Assembly, the concurrence of the Council of State (T'san-chêng Yüan) was required, and new members were to be elected promptly so that the Assembly could be reconvened within six months from the date of dissolution. Since members of the Council were appointed by the President, he would have no difficulty in securing its consent to the dissolution of the Assembly. These provisions, of course, placed the President in a better position to deal with the legislative branch of government, and there should have been no insoluble deadlock between the executive and legislative organs. In view of this fact, the Compact was, indeed, somewhat more workable than the Provisional Constitution. But the problem is whether the Compact had just reversed the arrangement of the Provisional Consti-

tution so as to make the President too powerful and the legislature too impotent, since the latter body was not armed with any effective weapon for counterattack, such as a vote of lack of confidence. It is contended that if the Compact adopted a presidential form of government, it should not have given the President the power to dissolve the legislature. If the Compact adopted a system of ministerial responsibility, it should have stipulated a cabinet which would assume full responsibility for the administration. Furthermore, under a cabinet system of government, the executive branch would have been given the power to dissolve the legislature, and the legislature would have been equipped with the right to cast a vote of lack of confidence. Since the Compact's provisions were in accordance with neither of these principles, the form of government which it created was, therefore, neither presidential nor ministerial. It was practically a dictatorship. This judgment is further substantiated by the fact that the proposed Legislative Assembly, impotent though it would have been, was never called into being throughout the period during which the Compact was in force. The President actually had a free hand in the government.

Powers Concerning Legislation.—Theoretically, the President did not have the power to legislate a power which was given to the Legislative Assembly. But provisions were made so that he had, nevertheless, a certain role to play in the field of lawmaking. His role was threefold: In the first place, he might initiate legislation and lay the bills on the budget before the Legislative Assembly.¹⁶ In the second place, bills which had passed the Legislative Assembly had to be promulgated by him in order for them to become statutes.¹⁷ And in the third place, if the President should disapprove a bill duly passed in the Legislative Assembly, he might return it to the Assembly for reconsideration, with a statement of the reasons for his disapproval. In the last instance, the former decision of the Assembly might be upheld by a majority of two-thirds or over of the members present. If, however, the President still maintained that the bill would greatly endanger or harm either the internal administration of the state or its foreign relations, or that there were great and important obstacles in the way of its execution, he might, with the concurrence of the Council of State, withhold promulgation. Since the Council of State was appointed by the President, its concurrence was, of course, merely a formality. As a result, even if the Legislative Assembly had been established, it would have been entirely unnecessary for the President to

fear that it would unduly meddle with his administration by enacting undesirable legislation.

Administrative Powers.—The term "administrative powers" used here includes the power to execute laws, to prescribe and determine the organization of all offices, to issue the regulations fixing the duties of officials, and to appoint and dismiss civil and military officials.¹⁸ Unlike the position of the President under the Provisional Constitution, he could now exercise these powers independently without concurrence of the legislature. The officials appointed by him were, therefore, invariably his subordinates and were exclusively responsible to him. He could adjust the governmental machinery whenever he thought fit. For the promotion of public welfare, for the execution of the statutes, or in pursuance of authority granted by the statutes, the President might, moreover, issue or cause to be issued ordinances, provided that no ordinance would alter any statute.¹⁹ In short, the President was the chieftain and pivot of the whole administration of the nation.

Military Powers.—The incumbent in the presidency at the time had been the creator of the nation's modern military forces and had personally enjoyed their loyalty ever since the establishment of the Republic. The Compact legalized his position not only as the nominal Commander-in-Chief of Army and Navy but also as the real leader of the land and sea forces of the nation. He further had the power to determine their organization and strength.²⁰

Diplomatic Powers.—The President was given almost full control over the conduct of the nation's foreign relations. He represented the Republic in the family of nations by sending and receiving ambassadors and ministers.²¹ He could declare war on, and conclude peace with, other nations.²² Finally, he could make treaties without the concurrence of any other agency, provided the articles therein did not provide for any change of territory or increase the burden of the citizens. In these cases the concurrence of the Legislative Assembly was required.²³

Financial Powers.—The President also had a unique position in relation to the control of the public finance. In the first place, the President was to prepare budgetary estimates. Estimates for the objects of expenditures specified below were not to be rejected or reduced by the Legislative Assembly without his concurrence: (a) those appertaining to the legal obligations of the government; (b) such necessary expenditures as may have arisen as the result of statutes; (c) expenditures

necessary to carry out treaties; and (d) expenditures necessary for the organization of the army and navy.²⁴

Since expenditures for certain purposes were virtually determined by the President, he was practically unrestricted in the most important spheres of government such as maintenance of armed forces, conduct of foreign relations, execution of laws, and conclusion of contracts.

Secondly, it was provided that in order to meet special requirements, there might be included in the estimates appropriations to continue for a designated number of years as a Continuing Expenditure Fund.²⁵ Consequently, the President could even avoid the annoyance of making yearly estimates for certain expenditures. Nor was this all. In order to meet deficiencies on requirements unprovided for in the original estimates, a Reserve Fund was also to be included.²⁶ The President, therefore, never had to worry about a lack of appropriation. It was, moreover, provided that if the new estimates had not been acted upon, the appropriations of the previous year should continue in force.²⁷ As a result, the government was always able to tax and to spend.

The most significant stipulation about public finance in the Compact was that, should international warfare, internal disturbance, or other extraordinary circumstances prevent convocation of the Legislative Assembly, the President, with the concurrence of the Council of State, might make urgent financial appropriations, provided he would request the Legislative Assembly for ratification at the beginning of its next session.²⁸

These were the legal aspects of the President's financial powers. While the Compact was in force, President Yüan's practical control of public finance was effective and unchallenged. In 1914, relying upon his personal prestige and military strength, he ordered the provincial authorities to resume the obligation of sending cash contributions to the central government as they had done during the Manchu Dynasty.²⁹ Indeed, the central government received the largest amount of such contribution in the years 1915 and 1916. After that time, the amounts became smaller and smaller. Eventually the various provincial authorities once again withheld such contribution altogether.³⁰

Besides securing cash contributions from the provinces, President Yüan, in 1915, also ordered the Department of Finance clearly and definitely to define the sources of the central and provincial revenues so as to assure the central government regular and separate funds. As a result, five

important taxes were allocated as the revenue of the central government.³¹ To these five taxes, four more were added in the next year.³²

The strong financial position of the President at this time was further strengthened by the administration of the customs and the salt tax by foreign powers and the successful flotation of domestic loans in the years 1914 and 1915.³³ It is to be noted that while China, as a nation, lost control over her tariff and salt tax administration by accepting foreign supervision over these matters, her central government was, however, thereby benefited. Since these revenues were controlled by foreign powers, local authorities were unable to withhold the receipts from them, and the central government could expect, with certainty, to receive a considerable proportion of these receipts yearly. In fact, after 1918, although local warlords had taken almost all revenues of the central government within their respective spheres of domination, the surplus incomes of the maritime customs and the salt gabelle were still available to the central government in Peking. Solely from the standpoint of the central government, foreign control of these revenues was perhaps a blessing in disguise.

Power to Confer Honors, Amnesty and Pardons.—Like the system under the Provisional Constitution, the President was empowered to confer decorations and other marks of honor and to grant general amnesty, special pardons, commutation of punishment, and restoration of rights. He could do these independently except in the case of general amnesty, where the concurrence of the Legislative Assembly was required.³⁴ A power denied him under the Provisional Constitution but permitted under the Compact was to confer titles of nobility and rank upon citizens and officials.³⁵ Since China then was a Republic, such a provision was, indeed, strange.

Emergency Powers.—In his message to the Constitutional Compact Conference concerning the revision of the Provisional Constitution, President Yüan had specially emphasized the necessity of his being granted emergency powers. The Compact, therefore, provided that the President might, in accordance with the provisions of the statute, declare a state of siege.³⁶ According to the "Law on the Declaration of a State of Siege," which had been previously enacted by the National Council in 1912 and was then still in force,³⁷ no fixed procedures were to be observed in making such a declaration, and the conditions under which a state of siege might be declared were also not rigidly laid down. Consequently, the President could declare a state of siege, which might circum-

scribe the rights of citizens in numerous ways, almost at any time and under any circumstances.

Moreover, the President was authorized to issue, with the concurrence of the Council of State, emergency ordinances having the force of law, at a time of urgent necessity when the Legislative Assembly could not be convoked, in order to maintain peace and order or to avert extraordinary calamities; but such ordinances were to be submitted to the Legislative Assembly for ratification at the beginning of its next session. Should the said emergency ordinances be rejected by the Assembly, they would thereafter be null and void.³⁸

The Staff Officers of the President

Since the President had been made the Chief Executive of the nation both in law and in practice by the promulgation of the Compact, the staffing of his office naturally became more important. Generally speaking, there were two kinds of staff officers attached to the President at this time: those dealing with political affairs and those dealing with military affairs. The former included the Board of Political Affairs (Chêng-shih T'ang) and its auxiliary agencies; the latter was the Office of the Commander-in Chief of the Army and Navy.

The Board of Political Affairs and Its Auxiliary Agencies.—Immediately after the promulgation of the Compact, President Yüan, in pursuance of the provision that "the President is the Chief of the Administration and shall be assisted by a Secretary of State,"³⁹ ordered the abolition of the Cabinet and its secretariat, and the establishment of the Board of Political Affairs within the Presidential Office.⁴⁰ Meanwhile, all political matters and papers, which had been hitherto required to be reported or transmitted to the Premier, were now to be directly submitted to the President. The Secretary of State (Kuo-wu Ch'ing) and the ministers of the various departments were only to execute his policies and to give him advice, which he was not legally bound to accept.⁴¹

The Board of Political Affairs, therefore, had two functions. One was to act as the President's secretariat. In this capacity, its officials checked the reports and memoranda of all government agencies for the President, and prepared the President's instructions to them. The other was to be a closely attached advisory and deliberative body on political matters. Thus, there was frequent consultation of the senior officials of the board by the President.

The board was headed by the Secretary of State, who was assisted by two under-secretaries and eight councilors.⁴² As

has been already mentioned, legally the Secretary of State was not the head of the administration and was in no way superior to the ministers of the various departments. Unlike the Secretary of State in the United States, who is a member of the President's Cabinet and concurrently the head of the Department of State, the Secretary of State under the Compact in China did not hold any departmental post, and was in no way legally connected with the heads of the various departments. His legal position was, strictly speaking, only that of chief assistant to the President. His authority and functions were broader and somewhat more important than those of the secretary-general to the President under the Provisional Constitution. But he certainly had no legal right to subordinate the ministers of the various departments and to exercise an influence superior to that of the Premier.

In practice, however, the Secretary of State played a significant role in the government. Every day he met with the President for at least one hour and they often lunched together. Both in the meetings and at the lunch table, they discussed the most important affairs of the nation. Since no other person in the Government had the privilege of being so close to the President, the Secretary of State naturally became his most intimate and influential adviser. In this informal way he exercised political influence. Officially, all reports and memoranda from the various departments were first to be transmitted to him, and he was to submit them, together with his comments and recommendations, to the President for action. This offered another opportunity for him to secure a considerable amount of control over the policies and activities of the Government. Moreover, when ministers of the various departments wished to confer personally with the President, they customarily asked the Secretary of State to accompany them and to join in their conversation with the President. In view of these two practices, one prominent correspondent of that time held that the ministers of the various departments were actually in a subordinate position to the Secretary of State.⁴³

The fact that the Secretary of State became so much more important in practice than he was according to law was not, to be sure, because the President had relinquished any of his legal authority. It was purely a result of the unusual personal relationship between the incumbents of these two offices. It is to be noted that President Yüan Shih-k'ai and Secretary of State Hsü Shih-ch'ang had been intimate friends and colleagues for decades, and the followers of the former had

also been the subordinates of the latter.⁴⁴ Mr. Hsü's position became important, therefore, because Mr. Hsü himself actually was "President Yüan's other self."⁴⁵ They acted together and they thought alike. In consequence, there was no distrust, no friction, and no struggle for power between them.

Under the Secretary of State, the Board of Political Affairs was divided into six bureaus, respectively in charge of legal affairs, confidential affairs, civil appointments, budget and statistics, printing and engraving, and miscellaneous affairs.⁴⁶ Most of these bureaus were not so significant in the whole government machinery since their functions were largely technical and routine in nature. But the Bureaus of Confidential Affairs and of Budget and Statistics were different. The former was the core of the Board itself. Secret documents were prepared and examined there. And the latter actually surpassed the authority of the Department of Finance by being the place where important financial policies were made.⁴⁷

The Office of the Commander-in-Chief of the Army and Navy.—In the Western democratic countries, military affairs are usually transacted by the administrative departments concerned under the immediate direction of the respective ministers in pursuance of the will of the head of state, should the latter be constitutionally the commander-in-chief of the armed forces. Within the office of a head of state, commonly only a few military attachés are found, and they usually occupy an insignificant position. But it was not the same in China while the Compact was in force. Since it provided that the President was personally to command the armed forces of the nation, President Yüan, accordingly, established a separate office directly under him to be composed of the General Chief of Staff, Minister of Army, Minister of Navy, and other high military officials whom the President might specially appoint.⁴⁸ This heavily staffed office was to plan the defense measures of the nation and to transmit the President's military orders to the various units of the armed forces. Thus the Departments of Army and Navy became practically powerless. This fact also showed the unprecedented concentration of power in the President's hands during that period.

The Executive Departments

Since enactment of the Compact had converted the form of government from a system of ministerial responsibility to a semi-dictatorship, the status and organization of the various

executive departments naturally underwent several changes.⁴⁹ First, because of the abolition of the Cabinet, ministers of the various executive departments were no longer members of the nation's highest policy-making council, whereas they had been so under the Provisional Constitution, at least in name. Immediately above them was, not a Premier, but the President himself. He independently appointed them and had the power to dismiss them at will. He could call them together to discuss political matters but could freely ignore their advice. Under his direction, they were to supervise the administration and personnel of their respective departments and the affairs of the provincial governments which were within their respective jurisdictions. Whereas before they had been able to take independent action against illegal and inappropriate measures of the provincial authorities, they could do so now only after securing the sanction of the President. Legally speaking, under the Provisional Constitution, powers and functions of the various executive departments actually belonged to the ministers concerned and were exercised in their names. Now, under the Compact, powers and functions were given or assigned to the respective departments as government agencies, so that the legal authority of a minister even within his own department was also diminished. In short, ministers of the executive departments under the Compact had no independent status and were the President's administrative subordinates in practice as well as in law.

It may be noted that while the Compact was in force, China witnessed considerable stability of personnel in the various departments. The holders of the ministerial posts were uniformly the trusted followers of President Yüan Shih-k'ai. Had their socio-political views been more enlightened, they probably would have been a very cohesive team and would have given China an efficient and beneficial administration.

In the number and names of the various executive departments, no change was made by the enactment of the Compact. There were still nine departments respectively in charge of foreign affairs, finance, justice, army, navy, education, agriculture and commerce, internal affairs, and communications. But the internal organization of these departments did undergo several alterations. Formerly, all departments had only one deputy-minister, except in the case of the Departments of Interior and Finance, where there were two. Now, besides these two departments, the Departments of Army and Communications also had two deputy-ministers. Several bureaus which had existed before within several departments now

also were abolished. The departments were invariably subdivided into divisions only, ranging from three to eight, with minor changes in the size of personnel.

THE COUNCIL OF STATE (Ts'an-chêng Yüan)

Article 49 of the Compact provided for establishment of a Council of State, with the function of deliberating upon important matters of state when consulted by the President. The Constitutional Compact Conference was to determine its organization. Accordingly, the Constitutional Compact Conference enacted the "Regulations on the Organization of the Council of State," which was promulgated by President Yüan on May 24, 1914.⁵⁰ On June 20th, the Council held its opening meeting in Peking.⁵¹

The Composition of the Council of State

The Council was not an elected body. Its seventy members were exclusively appointed by the President. Officially, the President was to select his nominees from those who had rendered distinguished services to the nation, who had profound legal and political knowledge, who possessed administrative experience, who were eminent scholars, or who had practical experience in business and industry. In practice, though the majority of its membership included famous persons, such people were not in a position to represent the country as a whole. Many of them had been old colleagues of President Yüan in the Manchu Court. Others had been his lieutenants since the establishment of the Republic. No followers of Sun Yat-sen were appointed. Thus the Council contained only elements of the former imperial bureaucracy and of the officialdom in Peking who could reflect no political sentiments other than those of the President. This was fully illustrated by the absence of party warfare within the Council and by its subservient and obedient attitude toward the Chief Executive.

The Council was presided over by a Speaker, who was appointed by the President. Actually, Vice-President Li Yüan-hung was given this job. Indeed, after returning to Peking from the Governorship of Hupei in the winter of 1913, Vice-President Li's only active service in the Government was confined to this post. His authority in the Council, to be sure, was not great. Apart from supervising the routine business of the Council, the right to cast a deciding vote in case of a tie was perhaps his only significant privilege.

The Powers and Functions of the Council of State

Originally, its functions were to be attendance to enquiries addressed it by the President and discussion of important political affairs. Among the matters to be referred to it were to be those provided for in the Constitutional Compact,⁵² questions arising out of the Compact and laws connected with it, and disputes between the executive and judiciary. The President might also consult the Council in regard to treaties, the establishment of administrative offices, financial reforms, educational and industrial matters. On the other hand, the Council was also empowered to make suggestions to the President on these same matters, but any memorandum embodying the suggestions was to be signed by at least ten members.

For a sitting, a majority of the entire membership constituted a quorum, and a majority of the members present could pass a motion. There were certain powers which the Council could exercise only by a vote of two-thirds or more out of a quorum consisting of two-thirds or more of the total membership. These powers were: giving consent to the President's dissolution of the Legislative Assembly, the issuance of emergency ordinances having the force of law while the Legislative Assembly was not in session, the making of urgent financial appropriations also when the Legislative Assembly was not in session, and the withholding of the promulgation of laws for which the Legislative Assembly had overridden the President's veto.

From the above, it is clear that the powers and functions of the Council of State actually were not confined simply to discussion of important political matters. It possessed significant authority to interpret the Constitutional Compact, to determine disputes between the executive and judiciary, to draft the permanent constitution, and to ratify many of the President's important measures. Nor was this all. Since the proposed Legislative Assembly had not been organized, the President, on June 29, 1914, in pursuance of Article 67 of the Compact, ordered the Council to discharge the duties assigned to the Legislative Assembly.⁵³ Thus, the Council was to combine legislative duties with its original functions as an advisory body. Because the Government failed to set up the Legislative Assembly throughout the period that the Compact was in force, the Council continued to act as the Legislative Assembly until it was dissolved on June 29, 1916, shortly after the death of President Yüan.

Generally speaking, while acting in the capacity of the Legis-

lative Assembly, the Council seems to have devoted itself almost exclusively to the task of law-making. The notable statutes enacted by it included "The Law Governing Administrative Suits," "The Law Governing Censorship," "The Law Governing Administrative Petitions," "The Law Governing Government Audit," and "The Law Governing Government Accounting."⁵⁴ Apart from these, it was credited, or rather discredited, for its collaboration with President Yüan in the monarchical movement, the story of which will be sketched below.

THE LEGISLATIVE ASSEMBLY (Li-Fa Yüan)

The Legislative Assembly, as mentioned previously, was designed to be the legislative body of the government under the Compact. As has also been mentioned, on October 27, 1914, a presidential edict promulgated the laws drafted by the Constitutional Compact Conference governing the organization and election of the Legislative Assembly,⁵⁵ but the Government never took any steps to make these laws effective. The Assembly's functions were discharged throughout the period by the Council of State. Briefly, for the purpose of reference, it may be described as follows: The Legislative Assembly was to consist of 275 members, the term of membership being four years. Elections were to be conducted by electoral colleges, the direct electoral system being confined to the Special Central District and to Mongolia, Tibet, and Chinghai. In the remaining provinces qualified electors were to elect the electoral colleges, which would subsequently elect the members of the Legislative Assembly.

Qualifications for electors, for candidates for the primary election, or for membership in the Legislative Assembly were highly restricted. These qualifications were narrower than those formerly required for the parliamentary elections under the Provisional Constitution. Roughly speaking, only a man who had been a high official, had certain academic standing, or possessed a considerable amount of property could have the right to elect or to be elected.⁵⁶

The Legislative Assembly was to have had the following powers and functions.⁵⁷ It was to pass all bills and estimates, to discuss and pass or approve measures relating to the assumption of public debts and to the contracting of other liabilities as a charge of the national treasury, to reply to inquiries addressed to it by the President, to receive petitions from the people, to initiate legislation, to submit to the Pres-

ident suggestions and opinions relating to legislation and other matters, to raise questions in regard to administration over which doubts have arisen and to request the President to reply thereto. In the last instance, the President could refuse to reply should he deem it necessary for the matter to be kept secret.

The Legislative Assembly was not to have been given the power to oust either the President or the heads of the various departments from office in case they no longer had its confidence. But should the President make an attempt against the State, the Assembly might institute impeachment proceedings against him in the Supreme Court of Justice, if such action were approved by a majority of at least three-fourths of a quorum of at least four-fifths of the total number of members.

THE BOARD OF AUDIT AND THE AUDIT SYSTEM

After the enactment of the Compact, President Yüan, on June 16, 1914, issued an edict to the effect that the Bureau of Audit had been enlarged to a Board of Audit; and the President, instead of the Cabinet, was to be its immediate supervisor.⁵⁸ The board consisted of a president, a vice-president, fifteen auditors, and twenty-seven assistant auditors. The president and vice-president were appointed by the President of the Republic and were to exercise complete control over the affairs and officials of the board. The auditors and assistant auditors were also appointed by the President of the Republic, but upon the recommendation of the president of the board.

In the performance of its business, the board was divided into three sections, together with a committee on the yearly accounts, and a special section on foreign debts. The three sections, each of which was composed of at least three auditors and at least four assistant auditors,⁵⁹ were to conduct the preliminary audit of the government's accounts. The committee on the yearly accounts, whose size was not fixed by law, was composed of auditors and assistant auditors appointed by the president of the board, with the president and the vice-president of the board being its ex-officio chairman and vice-chairman. It was entrusted with making the final examination of the reports of the three sections on their auditing of the government accounts and with compiling the "General Report on the Auditing of the Yearly Accounts of the Government." As part of the general report, the committee might also append a report on the degree to which the various government

agencies had conformed to budgetary provisions in their financial transactions. The special section on foreign debts was headed by two chairmen, one being a Chinese, another a foreigner. They were appointed by the President of the Republic, and were provided a number of assistants. The special section audited the receipts and payments of foreign debts.

It was provided that the heads of the various government agencies should periodically submit the accounts of the receipts and disbursements to the Board of Audit for examination. If the board deemed that the principles embodied in the budget-planning and the specific budgetary provisions concerning revenue and expenditure had been observed, it was to issue a warrant for these accounts so as to relieve the fiscal officials concerned from responsibility. If the board deemed that there were certain unauthorized receipts and disbursements, it was to request the head of the agency concerned to take proper disciplinary action against the fiscal officials concerned or to seek compensation from them for any deficit.

If heads of certain agencies themselves were responsible for any illegal or inappropriate financial transaction, the board could report the matter to the President of the Republic for action.⁶⁰

Although the audit system was not so elaborate as that under the Provisional Constitution, it could still have been useful in unearthing various kinds of corruption, abuse, and inefficiency, had the system been faithfully carried out. In fact, however, the Board of Audit accomplished very little, as there were then neither budgets nor a well-ordered financial administration.

ADMINISTRATIVE ADJUDICATION AND THE CENSORIAL SYSTEM

As has been indicated above, since the last days of the Manchu Dynasty, when political and legal reforms were being considered, the legal system of Continental Europe had been decided upon as a pattern. One of the characteristics of the Continental legal system is the existence of an administrative court to settle the justifiable disputes arising out of administrative acts. The Provisional Constitution of the Republic had already stipulated special agencies to deal with cases other than civil and criminal matters.⁶¹ But circumstances prevented the creation of any of these agencies before the Provisional Constitution itself was nullified by President Yüan. Subsequently, the Compact also made the same provi-

sion,⁶² and related laws governing the organization of the Administrative Court, administrative appeals, administrative petitions, and censorial procedures were simultaneously promulgated.⁶³ Thus the organs for administrative adjudication and censorial actions were shortly established.

The Composition of the Administrative Court

Unlike the administrative court of the Kuomintang regime in later years, which was under the supervision of the Judicial Yüan, the Administrative Court (P'ing-chêng Yüan) of the Peking regime was placed directly under the President. It had a president and fifteen judges, divided into several chambers, each with a president chosen from the judges. The president of the court, being appointed by the President of the Republic, had the function of supervising all officials of the court and was not necessarily to serve as a judge at the same time. The judges were required to have been either in the civil service at least for three years with the rank above the "recommended class" or in the judicial service with due rank for at least two years. The President of the Republic was to appoint the qualified nominees who had been secretly recommended by the President of the Administrative Court, the ministers of the various executive departments, the president of the Supreme Court, and other high advisory bodies. While they were serving the Administrative Court, they were not allowed to join any political association, nor to be a member of the national or local legislature. Nor could they practice law or conduct commercial business. Among the five judges of each chamber, one or two must have been in judicial service previously. These requirements were designed to insure, on the one hand, that the judges would be familiar with the subject matter of the disputes which came up before the court for adjudication and to prevent them, on the other hand, from being involved with special interests of one kind or another.

In position the Administrative Court might, therefore, very well be compared to the French Council of State or the judicial section thereof. As a matter of fact, its freedom from administrative interference was in theory even greater than that of its French counterpart. And in actual authority and in prestige it was also somewhat superior to its counterpart under the Kuomintang regime in later years. This was particularly so during the period before 1920. After 1920 its effective functioning was thwarted by the increasing political chaos.⁶⁴

The Procedures for Administrative Adjudication

The procedures for administrative adjudication were quite complicated. They may, however be summarized as follows. It was provided that no suits could be brought to the Administrative Court until the proper administrative authorities had failed to satisfy the persons concerned.⁶⁵ Accordingly, any man who was of the opinion that his property rights or other interests had been damaged or injured by either illegal or improper acts of any administrative authority, central or local, might bring an action against that authority to the authority next higher. Actions against the highest authorities either of the central government or of the local governments were, however, to be brought to the original authorities. If the ruling was unsatisfactory, the petitioner might appeal to an authority one step higher than the one which rendered the ruling. No appeal was allowed over or above the central executive departments. The rulings of the departments were final as far as recourse to administrative petition was concerned.

The Administrative Court was the last and final authority on justifiable administrative disputes. The petitioner, if he felt that full justice had not been done after going through a series of administrative petitions, might bring this complaint, within sixty days, to the Administrative Court. In case the persons concerned had failed to do so or had otherwise neglected to comply with the procedures, the censors also might bring the case to the court. But in any event, only cases involving illegal acts on the part of an administrative agency could be brought to the Administrative Court for adjudication; those involving merely inappropriate administrative acts were to be finally decided by the proper administrative authorities.

Once a case was brought to the court, it could not be withdrawn except when it had been brought there by the censors. Upon the receipts of a complaint, the court was to examine it and to decide whether it would take action thereon or reject it altogether. If the case was accepted, the court was to notify the defendant, which was invariably an administrative agency, for written answers to the complaint. Such preliminary written arguments between the two parties might be repeated for a second time at the discretion of the court.

In the trial at the court, oral arguments were in order, although the court, either itself or at the request of the plaintiff, could decide to render judgment after having seen the

written ones. Meanwhile, the court might call witnesses and conduct investigations. The administrative rulings which had been given during the course of administrative petition were also to be examined. Trials at the court were conducted by one of the three chambers, each of which consisted of five judges. A decision might be reached by a majority vote of the judges present, with the president of the chamber having the right to cast a decisive vote in case of a tie. There was no further appeal against a decision so rendered.

For the convenience of litigants in places far from the nation's capital, the President of the Administrative Court might order the establishment of an ad hoc chamber,⁶⁶ composed of several judges of the highest local law court and one or more judges of the Administrative Court, at the place where the administrative agency in question was located, to hear cases against a local administrative agency other than the highest one.

Until the Administrative Court had rendered a decision, the acts or rulings of the administrative authority concerned were to remain in force, unless there was a special legal provision. But the court, either itself or at the request of the plaintiff or of the administrative authority, might order the temporary suspension of their execution in order to prevent further serious damage to the rights of the litigants concerned.

After the court had rendered a decision, its president was to report to the President of the Republic, who was to order the administrative agency concerned to carry out the same. The court's decision might call for the cancellation or alteration of the illegal administrative act or ruling. If the administrative agency concerned failed to carry out the court's decision, the censors could institute impeachment proceedings against the head of the agency in order to take either disciplinary or criminal action. Disciplinary action could be taken by the President of the Republic upon the recommendation of the President of the Administrative Court, whereas criminal action was to be decided upon by an ordinary law court.⁶⁷ The court's decision also had a binding force upon a third party to a case.⁶⁸

To evaluate, the Administrative Court had, as has been said before, functioned quite well before 1920 while the political situation in Peking was still relatively stable. But to say that it had been able to protect the rights of the people against the executive power would certainly be an exaggeration. For, in the first place, the lack of easy accessibility to the court because of the vast size of China,⁶⁹ and the high cost of liti-

gation were already more than enough to discourage an essentially poor people from resorting to this channel to secure redress against illegal administrative acts of officials.⁷⁰ In the second place, very few individuals in China at the time had adequate legal knowledge to know how to use this instrumentality in case their rights had been injured by illegal administrative acts, even if they lived near the court. Moreover, it would be fair to say that, except for perhaps a handful of people, no one knew of the existence of the court.

The Censorial Office and the Censorial System

Under the supervision of the Administrative Court, there was another organ called the "Censorial Office." The Censorial Office consisted of a chief censor and sixteen censors, appointed by the President of the Republic.⁷¹ Both the censors and the judges of the Administrative Court were legally protected from being arbitrarily dismissed, transferred, or suffering a cut in salary.⁷² So far as administrative adjudication was concerned, the relationship between the censors and the judges of the Administrative Court resembled very much that between the procurators and the judges of an ordinary law court. Since mention has been made of the roles of the censors, we are concerned here merely with their function in censoring officials.

In exercising the power of censorship, the Censorial Office acted independently from the Administrative Court.⁷³ In this sense, it may be regarded as the counterpart of the old Chinese censorial institution, though its powers and authority were unable to approach the old institution in magnitude.⁷⁴ In speaking of the functions of the old institution, Ch'ien Tuan-shêng made the following observations:⁷⁵

In harmony with the old regime in which the emperor reigned supreme and ethical conduct and political activities were inseparable, the censors of old had a wide range of functions. The acts of private as well as public life formed the subjects of censorial review. Alleged intentions to commit certain deeds, and rumors of certain deeds as well as actual deeds themselves could justify a censor in preferring an impeachment. Furthermore, anybody who had anything to do with public life was liable to impeachment: the emperor and his household were not too high and the small gentry not too low.

An accurate analysis of the actual content of the old censorial power is not easy. But in addition to what is

known in the west as the impeachment power, namely the power to impeach an official for his illegal official conduct, the Chinese censors were certainly in the habit of doing a multitude of other things. They might voice their opinions on the imperial succession, on policies of a general nature, whether political, economic, or social, and on desirable institutional and administrative reforms. They might denounce or raise objection to imperial edicts. They might criticize the deportment and demeanor of all public persons including the emperor, especially at public ceremonies. They might investigate the administration for misconduct and search public accounts to detect corruption. They might propose the reopening of cases in which grave injustice was alleged, and on orders from the throne they might sit as cojudges at the retrial.

The Censorial Office also had a similarity to the Control Yüan under the Kuomintang regime in later years. But the latter was different from the former in the following points: First, the Control Yüan was raised to a position of equality with the other powers of the state, such as the executive, legislative, judicial, and examination, whereas the Censorial Office was placed indirectly under the President. Secondly, the powers of the Control Yüan were also, at least in theory, more comprehensive than those of the Censorial Office. Aside from the power of impeachment, the Control Yüan also had the power to conduct inspections of a general nature and investigations into specific phases of administration. The audit also belonged to the Control Yüan. Out of this multitude of functions, the Control Yüan could even propose to government departments measures for the improvement of their administration. However, if the Censorial Office had been able to exercise more fully and effectively the power which it already had, there certainly would have been less illegal action or dereliction of duty on the part of officials. But to say that it was guilty of misconduct or had been unmindful of its duties would undoubtedly be a distortion. In fact, the censors tried to be faithful to their duties. This was clearly illustrated by the fearless effort of Censor Hsia Shou-k'ang in petitioning President Yüan to disperse the "Society for the Preservation of Peace" (Ch'ou-an Hui), which was actively conducting the propaganda for a monarchical government.⁷⁶ The fact that the Censorial Office did not contribute very much to the improvement of administration can be attributed primarily to the abnormal political environment in China at the time.

Having noted that the functions of the Censorial Office were not so far-reaching as those either of the old censorial institution or of the Control Yüan under the Kuomintang regime, we should proceed to examine what its exact powers were. First, the censors might institute censorial proceedings against the Secretary of State and the ministers of the executive departments for any illegal acts. Secondly, they might censor all other officials who had acted in contradiction to law, had committed bribery, had been seeking for private profit in performing public functions, or had neglected duties.⁷⁷

Censorial proceedings might be proposed either by the censors themselves, or at the request of the people. The President of the Republic also could direct the Censorial Office to conduct an investigation into certain acts of officials. After a censorial proceeding had been proposed, the proposal was to be examined or investigated by two or more censors. If the censors deemed that censorial action should be taken, they were to recommend this to the President, who would take final action. If the censors were of the opinion that the proposal should be rejected, they were to ask the Chief Censor to do so.

Having accepted the recommendation for censoring certain officials, the President might submit the case to the Administrative Court for action. The Administrative Court could either render its own decision thereon or recommend that the President direct the ordinary law courts or proper administrative agencies to institute judicial or disciplinary proceedings against the officials concerned. If a censorial case involved criminal matters, the Censorial Office might recommend the immediate dismissal of the officials concerned even while the censorial proceedings were still in progress.⁷⁸

THE AMENDMENT OF THE PRESIDENTIAL ELECTION LAW

President Yüan Shih-k'ai's efforts in the years 1914 and 1915 had not been confined to the strengthening and consolidation of the power of the head of the state by enacting the Compact and by his failure to institute the Legislative Assembly. It is clear that he had also persistently devoted himself to the task of perpetuating his own position in the nation. The amendment of the Presidential Election Law before the end of 1914 was, indeed, his first step toward that goal.

One may recall that prior to its dissolution, the Parliament had passed a part of the permanent Constitution, known as the Presidential Election Law, on October 4, 1913, and

that, in pursuance of that instrument, Yüan Shih-k'ai was shortly thereafter elected President by the Parliament.⁷⁹ But on August 18, 1914, the Council of State, which always rubber-stamped President Yüan's wishes, suggested that the Presidential Election Law be amended. A few days later, President Yüan asked the Constitutional Compact Conference to undertake the task of revision, which completed on December 28. On the following day, the revised law was promulgated by the President.⁸⁰ This law constituted a unique and novel experiment in Chinese constitutional history and fully revealed the intention and ambitions of President Yüan. However, its significance cannot be entirely appreciated without reviewing the contents of the law before revision.

According to the original law,⁸¹ a Chinese citizen in the full enjoyment of public rights, of the age of forty or more, and resident in China for at least ten years was eligible for election as President. He was to be elected by a National Convention, composed of the members of the Parliament, by a majority of at least three-fourths of a quorum of at least two-thirds of the total number of members of the Parliament. Voting was to be by secret ballot. Should no definite result be obtained after the second ballot, the two candidates obtaining the largest numbers of votes thereon were to be voted for. The candidate receiving the majority of votes in this balloting was elected. The election of the Vice-President was to follow the same procedure.

The period of office of the President was to be five years, and, if re-elected, he might hold office for one more term. Three months prior to the expiration of the term, the members of the Parliament were to convene and organize the National Convention to elect the President for the next period. Should the post of President become vacant, the Vice-President was to succeed him until the expiration of the term of office of the President. Should, for any reason, the President be unable to discharge his duties, the Vice-President was to act for him. Should the Vice-President vacate his post, the Cabinet was to officiate for the President; but the members of the Parliament were, within three months, to convene and organize a National Convention to elect a new President.

In view of the contents of the revised law, President Yüan was apparently dissatisfied with the old law's provisions on the electoral procedures and the term of office of the President. It would not be unfair to say that he wanted to revise the old law because he wished to establish a cloaked dictatorship with a life term and the power of designating his successor.

Let us look now into the provisions of the new law. With regard to the qualifications of a presidential candidate, it provided that he should be a male Chinese citizen of at least forty years of age, possessing the rights of citizenship, and having resided in the Republic not less than twenty years. Although this stipulation was already much more restrictive than its counterpart in the old law in that it eliminated female citizens from becoming candidates and increased the required length of residence in China, its conservative nature lies rather in the fact that not any one who had these qualifications could automatically become a candidate. Only those who had been nominated by the incumbent President could be so regarded.

Thus at each election the existing President was to nominate three candidates, whose names were to be written by the President on a gold plate, which was to be locked up in a casket and the keys kept by the President, the Secretary of State, and the Speaker of the Council of State. On the day of the Presidential election, the President was to make known to the electoral college the names of the persons recommended by him. In case of the absence of the existing President, a committee of ten appointed by the Chairman of the Special Presidential Electoral College was to witness the opening of the casket. The Electoral College could then vote for the re-election of the incumbent President in addition to the three nominees. The candidate would be elected who received a two-thirds majority or more, out of a quorum of not less than three-fourths of the total membership or, failing this, the largest number of votes in the final ballot on the two highest candidates. It is apparent that, in relying upon this procedure, President Yüan could either bequeath the presidency to persons of his own choice or directly secure his own re-election. In other words, no one but himself and his favored persons could become candidates for the presidency.

The fact that the President could completely dictate the presidential election was further guaranteed by the peculiar composition of the Electoral College. The Electoral College was to consist of one hundred members, fifty elected from the Council of State and fifty elected from the Legislative Assembly. Since the President was able to bring pressure upon members of these two institutions,⁸² and the presidential election was to be conducted by signed ballot, it would never act in opposition to the President's wishes.

Furthermore, the President might also hold the office practically for life. For in addition to the provision stipula-

ting that the term of the presidential office should be for ten years, with the privilege of being reëlected for an unlimited number of terms, the President could stay in the office continuously without bothering to go through the procedures for reëlection. This could be accomplished merely by persuading the Council of State, which was composed of his own appointees, to pass, in the year of election, a resolution by a two-thirds majority vote, declaring the continuation of the incumbent president for another term. Indeed, a critic once said that this provision made the entire law the most subtle and mysterious piece of legislation.⁸³

YÜAN SHIH-K'AI'S MONARCHICAL MOVEMENT AND ITS IMPACT UPON THE STRUCTURE OF THE GOVERNMENT

Toward the end of 1915, the structure of the central government of China underwent another change. The change was, indeed, only short-lived. But since it was brought about by the monarchical movement of Yüan Shih-k'ai, it deserves special treatment. Before proceeding to examine the change itself, a cursory survey of the monarchical movement is indicated.

The Monarchical Movement of Yüan Shih-k'ai

The monarchical movement of Yüan Shih-k'ai also served to illustrate the fact that the Revolution of 1911 had failed to bring about far-reaching changes in social, political, or ideological fields. If republicanism had become everyone's common conviction, Yüan Shih-k'ai and the men surrounding him would have had to be contented with what they had achieved by the revision of the Presidential Election Law, which already made it possible for them to govern the country indefinitely. The effort to get Yüan Shih-k'ai formally crowned undoubtedly resulted from the fact that a desire for a monarchy was still lingering in the hearts of some Chinese leaders.

The movement for Yüan's coronation was reportedly started in the spring of 1915 by Yüan's trusted friends.⁸⁴ The diplomatic tension caused by the negotiations over the famous Twenty-one Demands of Japan upon China also encouraged rather than impeded the activities of manipulation.⁸⁵ It was reported that when presenting the demands, the Japanese representatives had told Yüan Shih-k'ai that if he endorsed the principle of Japanese guidance in his administration, the Japanese government would help him in his imperial designs.⁸⁶ But Yüan Shih-k'ai, being skilled and cautious in statecraft,

prevented the movement from becoming public and rejected the idea itself so long as its execution seemed to him premature. In the first week of July, 1915, he asserted that any attempt to force the sceptre on him would cause him to leave the country and end his life abroad.⁸⁷

Events, however, moved quickly enough. One month after the president had made his announcement, Frank J. Goodnow, chief legal adviser to President Yüan, returned to China for a visit. Chou Tzŭ-ch'i, Yüan's henchman, took advantage of the opportunity thus presented and offered to secure his views on questions of government.⁸⁸ In response to the request, Dr. Goodnow now contributed to the officially sponsored Asiatic Daily News an article setting forth his views on the desirability of China's return to monarchy.⁸⁹ Since Yüan Shih-k'ai never failed to understand the value of foreign support in all his enterprises, the famed American scholar's views were, therefore, quickly seized upon and used as a basis for agitation for the restoration of the monarchy. About one week after the publication of Dr. Goodnow's article, Yang Tu, a member of the Council of State and an intimate friend of President Yüan, formed a society, known as the Society for the Preservation of Peace, which openly took the lead in the furtherance of the movement.⁹⁰ In a short time the movement found support among the military governors of the provinces and a number of prominent officials.

However, the President still kept carefully in the background, always posing as the defender of the Republic, yet taking no real action to stop the movement. On September 6 a message from the President was read to the Council of State, in which reference was made to the subject.⁹¹ After stating that "of late many citizens from the provinces have been petitioning the Council of State calling for a change in the form of the present government of the country," Yüan Shih-k'ai added, "but this is incompatible with the position I hold as President." The rest of the message, however, indicated that the President did not rule the question out of consideration, but recommended it to the careful attention of the council, as the only body qualified to deal with it. On September 22 the Council called the President's attention to the petitions, which actually had been inspired by the Society for the Preservation of Peace, in regard to the form of government, and continued:⁹²

In accordance with Clause 7 of Article 31 of the Constitutional Compact, this Council submits the suggestion to

the Government that the President be requested to accelerate the convoking of the National Convention within this year or devise other proper and adequate means to consult the will of the people with a view to the adoption of a fundamental solution so that the general situation may be settled and the minds of the people set at rest.

In his reply the President pointed out that in such a matter it was imperative to proceed with special care. The election for the National Convention would be finished by November 20th, and it would be convened as soon as possible thereafter.⁹³

A few days later the Society for the Preservation of Peace petitioned the Council, asking it "further to discuss the question and to suggest the organization of another popular body, with large and adequate powers, at an earlier date than the convocation of the National Convention."⁹⁴ To this body, it proposed, the question of the form of government should be submitted for final decision. The Council accepted this suggestion. A bill was drafted embodying the Law on the Organization of the Convention of Citizens' Representatives. On October 8th, Yüan Shih-k'ai promulgated this instrument.⁹⁵

The Convention of Citizens' Representatives was to consist of 1,834 representatives elected from the provinces, and special administrative areas: 32 from Inner and Outer Mongolia; 12 from Tibet; 6 from Chinghai; 24 from representatives of the Manchu, Mongolian and Chinese Banners; 60 elected by the Chambers of Commerce; 30 representatives elected by those who had done good service to the country; and 30 representatives of the learned scholars. In the provinces and dependencies the election was to proceed from the point reached in the election of the candidates for the National Convention. Thus the successful candidates in the primary elections were empowered to choose the representatives for the citizens' convention. The electorate was carefully restricted in all cases, and the election was put under the control of high officials. The voters were required to sign their ballots. In speaking of the election, Mr. Vinacke says:⁹⁶

Absolutely no opportunity was afforded the members of the Convention for deliberation and discussion of the proposed change. They were to be simply the means of registering the will of the people at the dictation of the government. Careful instructions were sent to the Superintendents, who were all officials of the government, as to the exact procedure to be followed, so that there would be no

chance of a slip. The ballots were all printed in advance and marked in the proper way so all that the people's representatives had to do was to sign their names. In spite of the fact that care was taken to see that only "favorable" representatives should be elected, the actual voting on the question of the change in the form of the State was conducted in most cases under the eyes of policemen and soldiers, so that the necessity for affirmative action was kept continually before the voters in the Convention. As each vote was cast it was opened and scrutinized before the representative was allowed to leave the room. Under the circumstances it is little to be wondered at that the Convention of Citizens' Representatives decided unanimously for restoration of the monarchy. The result could well have been announced in advance.

The elections were completed and the vote taken in December, and on December 11 the Council of State proceeded to count the votes and announced that the opinion of the nation was unanimously in favor of a monarchy and of Yüan Shih-k'ai as Emperor.⁹⁷

In the meantime, on October 28, the Japanese government, through its *chargé d'affaires* in Peking, advised China to postpone the conversion of the form of state to a monarchy.⁹⁸ Great Britain and Russia, and subsequently France, associated themselves with this advice, pointing out that the change might be provocative of grave disorder in China.⁹⁹ It can be well imagined how intense was the President's surprise when he received such a warning at this moment from the Japanese government, if we recall that the latter had been allegedly well disposed toward Yüan's monarchical dream. Nevertheless, the Chinese government, at the beginning of November, replying verbally to these representatives, pointed out that the movement had gone too far for it to be stopped and insisted that no apprehensions need be felt by the foreign powers regarding the public safety. It also emphatically declared that the attitude of the Chinese government had been against the proposed change, but that popular opinion demanded it.¹⁰⁰

In reply to a request from the Japanese government for further information, the Chinese government informed the representatives of the Allied Powers on November 11 that there was no intention of hastening the change in the form of government.¹⁰¹ There would necessarily be some delay in carrying out the change, owing to the preparations that would have to be made; but the government realized that this delay would be distasteful to popular opinion.¹⁰²

When the result of the voting was made known on December 11, the Council of State sent a petition to the President requesting him to ascend the throne. Still acting in a highly characteristic manner, Yüan Shih-k'ai refused the offer in his reply and stated that he would retain his present title and maintain the present situation of the country.¹⁰³ This reply produced at once a second petition to the same effect as the first and on December 12 Yüan Shih-k'ai intimated that since the change had come from the people, he, as their servant, could no longer refuse to do their will.¹⁰⁴ Steps were immediately taken to prepare for the coronation in spite of the fact that "advice" had been tendered from several sources against the change of government.¹⁰⁵ February 9 was the date fixed.

Constitutional Changes During the Period of Preparation for Coronation

Having agreed to accept the throne, Yüan Shih-k'ai, the emperor-elect, immediately took several steps to effect necessary institutional changes in the government. In the first place, he appointed, on December 14, ten commissioners to draft an imperial constitution so as to placate the country by showing his sincerity in the establishment of constitutional government, the necessity for which had been emphasized by Dr. Goodnow in his article. The Legislative Assembly had not been convoked at this time, but it was announced on December 16 that immediate measures would be taken to establish the legislature provided for under the Constitutional Compact.¹⁰⁶ Meanwhile Yüan declared that the "Favorable Treatment" previously granted to the Manchu court would never be altered.¹⁰⁷

In the second place, he reorganized the Board of Political Affairs by putting the Secretary of State clearly in a position to supervise the administration under the direction of the President.¹⁰⁸ Efforts were also made to add more dignity to the presidency. As a matter of fact, even before Yüan Shih-k'ai agreed to accept the throne memorials tendered to him from officials already had been written in the former monarchical form.¹⁰⁹

In the third place, he directed the Board of Political Affairs and the various executive departments and provinces to revise the obsolete and unworkable statutes and ordinances.¹¹⁰ Meanwhile, the ranks of many officials were exalted for the purpose of glorifying the official system.¹¹¹

In the fourth place, he proceeded to create peerages. Thus Li Yüan-hung was given the title of Prince of Wu-i.¹¹² Hsü

Shih-ch'ang, Chao Erh-sun, Li Ching-hsi, and Chang Chien received the title of "The Four Friends of Sung-shan" (i.e., of Yüan Shih-k'ai).¹¹³ Many others also were ennobled. They ranked as dukes, marquises, earls, viscounts, barons, and knights.¹¹⁴ Posthumous honours were conferred at the same time.

Besides these, it was ordered that a new calendar under the title of Hung-hsien or "Glorious Constitutionalism" was to be used from the first day of 1916, and that the presidential office was to be simultaneously renamed the "Hsin-hua Palace." In short, before Christmas Day of 1915 Peking was brightly illuminated in honor of the coming new regime, and every measure in its preparation was deliberately taken in conformity with Chinese precedents. This again demonstrated that the Revolution in 1911 had not effectively shaken off many of the old traditions.

The Government in Peking after Yüan's Abdication of the Throne

While the monarchists had been maturing their plans for making Yüan the new Emperor, the opposition had not been idle. When Yüan's monarchical plans became known, the noted scholar Liang Ch'i-ch'ao came out as an opponent of the movement.¹¹⁵ He presented the case for the anti-monarchists in a very able pamphlet which was widely read throughout the country.¹¹⁶ Men understood that far-reaching complications were in the air. The assassination of Admiral Chêng Ju-ch'êng, Governor of Shanghai, on November 10, and the unsuccessful attempt on December 5 to seize a government training ship, lying in the river at Shanghai, indicated that the Chinese Revolutionary Party under the leadership of Sun Yat-sen was also trying once more to take measures against Yüan.¹¹⁷

Nevertheless, there were no overt and serious acts taken against the authority of Peking before Yüan agreed to accept the throne. The people as a whole were not seriously concerned over the proposed changes. In their eyes Yüan Shih-k'ai, emperor, would rule little differently from Yüan Shih-k'ai, president. Only educated people and men in the political and military circles were concerned over the turn of events. Thus shortly after Yüan announced his acceptance, a protest was manifested in the form of a military rebellion. On December 25, Yunnan Province declared its independence and under the leadership of Ts'ai Ao prepared to resist the central government for the purpose of defending the Republic.¹¹⁸

At first, the government agreed with Yüan Shih-k'ai that "well trained troops will readily suppress the rebels on reaching the scene,"¹¹⁹ so it took a firm stand by ordering the arrest of Ts'ai Ao and other revolting leaders.¹²⁰ And yet, in a little more than three months after the outbreak in Yunnan, rebellion had spread over South and Central China; the troops of the central government had been unable to win any very decisive victories; the men on whom Yüan had relied for support deserted his cause one after another, or pleaded with him to give up the monarchy. Just as the Manchus had been hurried in their reforms by the Revolution of 1911, so the emperor-elect now tried to appease the opposition first by postponing the enthronement ceremony¹²¹ and then by promising the immediate convocation of the Legislative Assembly provided for under the Constitutional Compact.¹²² In order that delay should be minimized, the government suggested that the members of the citizens' convention should be called together to sit as the Legislative Assembly, since they had been elected by the people in almost the same way that members of the Legislative Assembly were to be chosen. The Council of State immediately gave its endorsement to this suggestion.

This concession thrown to the opposition did not serve to check the growth of the revolutionary movement, but was taken rather as an indication of weakness on Yüan's part. During the early part of March, 1916, however, the government forces made considerable progress from the military standpoint, so that many monarchists suddenly reversed their attitude and once again encouraged Yüan Shih-k'ai to ascend the throne.¹²³ But shortly afterward Kwangsi Province also declared its independence, and the diplomatic and financial conditions of the government meanwhile appeared to be increasingly unfavorable. Realizing that the attempt had failed on March 22, the emperor-elect issued an edict canceling the entire monarchical scheme.¹²⁴ As may be noted, during the whole of the episode Yüan Shih-k'ai had left a loophole for escape by his declaration that he was acting against his better judgment, and was only giving in to the will of the people. That was also the line he adopted in his edict.

The revolutionaries, up to the cancellation of the monarchy, had been fighting for that very goal. Achieving their purpose, they changed their demands to include the complete elimination of Yüan Shih-k'ai from participation in public affairs and the punishment of the leaders in the monarchical movement. At this moment Yüan made another attempt to

appease the opposition by asking Lung Chi-kuang, military governor of strategic Kwangtung Province, to use his good offices in the negotiations between the government and the revolting provinces. He hoped that Lung would be able to induce the latter to soften their demands. To Yüan's disappointment, on April 6, Governor Lung, having been won over against his master, also joined the column of revolutionists and helped organize a Southern Confederacy, with a Supreme Military Council sitting at Chao-Ch'ing, a city in western Kwangtung.¹²⁵ Shortly afterward Chekiang Province followed suit.¹²⁶ From every quarter notables, including Yüan's old follower General Fêng Kuo-chang, began telegraphing him that he must go. General Fêng, holding the balance of power on the Yangtze, called, in Nanking, a Conference of his colleagues in other provinces and decided that the retirement of Yüan Shih-k'ai was a political necessity.¹²⁷

In order to retain his office, Yüan still pursued his policy of appeasement. On April 21, he promised to reform the government by instituting a responsible Cabinet to take over the actual control of public affairs. His edict stated that the failure of the President to bring about stable conditions in the country was due to the lack of a responsible ministry.¹²⁸ To quote the edict directly: "Examining the root of this failure, I find that it has been due to the absence of a Cabinet and the consequent lack of direct responsibility. The fact that I have merely assumed the appearance of an unlimited control of all the powers of the State has been the cause of dissatisfaction on the part of the people."¹²⁹ The Secretary of State was therefore authorized to take control and organize a government "with the ministers of the various departments as members thereof who are to be mutually responsible to and for one another."¹³⁰

The actual organization of the Cabinet was provided for in an edict issued simultaneously with the preceding one.¹³¹ The Cabinet was to consist of the Secretary of State and the heads of the executive departments. They were to "assist" the President in "assuming responsibilities." In pursuance of authority delegated by the President, they were to supervise the whole affairs of the government, and to promulgate laws and ordinances. The Secretary of State alone, in pursuance of authority granted by statute or specially delegated, also could issue government ordinances. But important matters were to be decided at Cabinet meetings, such as law bills, presidential edicts, budgets, emergency expenditures, military organizations, treaties, declarations of war, making

of peace, appointments of officials of "selected rank," inter-departmental disputes over jurisdictions, petitions of citizens submitted by the Legislative Assembly, and other matters that might be defined by law or submitted by members of the Cabinet themselves. The Board of Political Affairs was in the meantime to be the secretariat of the Cabinet.

One day after the announcement of the reorganization, General Tuan Ch'i-jui, who had kept aloof during the monarchical movement, was appointed the new Secretary of State and Minister of Army, and subsequently given the official title of Premier.¹³² The only problem was to whom the Cabinet was to consider itself responsible. Although Tuan Ch'i-jui, after accepting the post, had asked Yüan to transfer all political and military powers to the Cabinet and to abolish the Bureau of Confidential Affairs, the Office of the Commander-in-Chief of the Army and Navy, and the Peking Gendarmery, all influential agencies under the direct control of the President, Yüan only gave an empty promise.¹³³ The President was still strong enough to dominate the government. Undoubtedly, he had hoped that the responsibility of the Cabinet might mean no more than it had meant during the few months just preceding the Revolution of 1911, when the Manchus nominally conceded the principle of responsibility by creating a figurehead Cabinet. He also had hoped that by doing this he would be able to achieve the objectives which the Manchus had failed to achieve.

But during May conditions steadily worsened. On the twelfth specie payment was suspended in Peking, a last attempt to negotiate a loan in America having failed, and three hitherto loyal provinces successively declared their independence.¹³⁴ These facts, together with the action taken by the Nanking Conference, made it impossible for the supporters of the President to continue to hold out. On the other hand, the Southern Confederacy was by no means in a position to carry on the fight either militarily or financially.¹³⁵ Thus both sides sought for the door leading to negotiation. Finally it was agreed, on June 5, that Yüan should retire. The Confederacy gave up its demand for punishment of Yüan and the other members of the monarchical party. The American legation also promised asylum to the disappointed autocrat.¹³⁶

In the final analysis, however, the decision rested neither with the Peking government nor the Confederacy. Just one day after the terms of settlement had been agreed upon, a higher hand intervened, and Yüan's death settled the dispute.

After his death the last edict of Yüan Shih-k'ai, sanctioned

by him as he was dying, was promulgated.¹³⁷ By this edict the executive authority was transferred to the Vice-President, Li Yüan-hung, in accordance with Article 29 of the Constitutional Compact. Although there were disputes over the validity of applying the Compact as the nation's fundamental law, the death of Yüan actually concluded a chapter of the constitutional development of the Republic of China.

In recapitulation, before the end of 1913 Yüan Shih-k'ai had already become a de facto dictator after having rendered the Parliament unable to act. But Yüan was too astute not to have someone to share the responsibility for his unconstitutional activities. Further, he knew the value of clothing his absolute power in a constitutional garb. In consequence, he convoked the Constitutional Compact Conference, composed of government appointees rather than elected representatives of the nation, for the amendment and revision of the Provisional Constitution. Shortly thereafter it drafted the Constitutional Compact based upon the principles proposed by Yüan Shih-k'ai. The Compact was promulgated by Yüan on May 1, 1914, to supersede the Provisional Constitution.

The most outstanding characteristics of the Compact were that it unfettered the restrictions on the executive and cut down the power of the legislature. It made the President practically the government itself. The Secretary of State and heads of the executive departments became his subordinates, legally as well as actually. The proposed Legislative Assembly was never organized and its functions were nominally performed by the Council of State, which acted only as a rubberstamp reflecting Yüan's wishes. The newly created Administrative Court and Censorial Office, though well designed, were also unable effectively to check maladministration.

If Yüan Shih-k'ai had been sincere in his desire to secure a free hand in order to govern the country, he should have served his country by availing himself of the constitutional system provided by the Compact. But his ambition was rather to perpetuate his personal authority, first by extending the term of his office and then by inspiring the monarchical movement.

The effort to elevate Yüan to emperor after he had been made virtually a permanent dictator indicated that the Revolution of 1911 failed to sweep away the sentimental attachment to monarchy in the hearts of certain Chinese leaders. In another words, it served as one more example to prove the superficiality of the Revolution of 1911.

The manner in which the monarchical movement was conducted also substantiated the general conviction that a republic of an ignorant and inexperienced multitude is always in danger of being preyed upon by selfish and ambitious persons.

The movement was, indeed, eventually defeated. The complexion of the anti-monarchical movement at the time showed, nevertheless, that only intellectuals and militarists could be counted upon as active elements in China's politics. Therefore, it is natural that the political destiny and government operations of China in subsequent years would still be largely determined by their behavior.

Government in Peking from Yüan's Death to the Arrest of President Ts'ao K'un

THE REVIVAL OF THE PROVISIONAL CONSTITUTION AND THE RISE OF SECTIONAL MILITARISTS

As has been said, after the death of Yüan Shih-k'ai Li Yüan-hung succeeded to the presidency in accordance with Article 29 of the Constitutional Compact. This action was immediately challenged by the Southern Confederacy and the members of the old Parliament, who had already assembled in Shanghai, preparatory to coming up to the capital. It is to be noted that the opposition to Li's assumption of the presidential chair was not because of personal unfitness. As a matter of fact, he had been earlier proclaimed by the South as the legitimate head of the state after Yüan's acceptance of the Throne.¹ Furthermore, at the moment everyone also realized that he alone of the prominent leaders had the trust of all sections of the country and of all classes. What the opposition protested was the constitutional basis of Li's installation.

The wording of the proclamation of Li's succession apparently indicated that the Government in Peking, which was controlled by the remnants of Yüan's regime, with Premier Tuan Ch'i-jui as their leader, regarded the Constitutional Compact as the fundamental law. But the Southern Confederacy and the Shanghai parliamentarians had long before declared that their ultimate objectives in the movement against Yüan Shih-k'ai were the revival of the Provisional Constitution and the restoration of the old Parliament. They, therefore, imposed these conditions as the price of their return to allegiance. Premier Tuan Ch'i-jui strongly resisted the demands and held that the Constitutional Compact should continue in force. He based his resistance on the grounds that the Provisional Constitution put too much limitation upon the executive.² In the midst of the controversy over the Constitution

and Parliament, the Commander-in-Chief of the Yangtze fleet telegraphed to Peking declaring his independence of the central government and his participation in the Southern Confederacy. This defection forced Tuan Ch'i-jui to reconsider the question of the constitution. On June 29 an edict was issued providing for the convocation of the old Parliament and the revival of the Provisional Constitution.³ Meanwhile, other demands of the South, including the cancellation of all laws made under Yüan Shih-k'ai's dictatorial rule⁴ and the punishment of the monarchist leaders, were accepted by Premier Tuan.

Thus Li's succession to the presidency was deemed as in pursuance of the Provisional Constitution. Parliament, which reconvened on August 1st, also decided to treat the entire period from the time of its dissolution by Yüan Shih-k'ai in 1913 until its meeting in 1916 as an interregnum. Accordingly, the members were to serve their full terms during the period when the Provisional Constitution was in active force. If this view had not been taken, it would have been necessary to hold new elections immediately, since the terms of the members of the House of Representatives and of a number of the Senators had expired during the dictatorship.

After the meeting of the Parliament, Premier Tuan and his newly formed Cabinet were confirmed in their position by the joint action of both branches of the legislature. Prior to that, the Southern Confederacy announced its own disbandment on July 14.⁵ Up to this moment, the political situation in Peking appeared to have been brought back precisely where it had been before the coup d'état of November 4, 1913, and an "era of good feeling" also seemed to have dawned in the political circles of China.

This apparent harmony was, however, not to last long. Speaking conservatively, it is doubtful whether there was any real harmony from the outset. The years from the restoration of the Provisional Constitution in 1916 to the overthrow of Generalissimo Chang Tso-lin's Military Government in Peking in 1928 were, in fact throughout "a pitiful period wherein the civilian authorities in the Central Government constituted either the puppet of the warlords or their sycophants. The Peking Republic fell into the expedient of giving de jure status to every shift in the interplay of power."⁶ The Chinese Revolutionary Party, the sole political party which maintained an unyielding attitude toward the warlords who were to successively control Peking, was ineffectual. Its members were many times driven out of the capital and

finally took refuge in the South where they were at the mercy of the local militarists.

The founder of warlordism in modern China was Yüan Shih-k'ai. In the later years of the Manchu Dynasty he was in charge of training and organizing the New Army divisions. While there had been personal armies in the previous generation—the Hunan armies of Tsêng Kuo-fan and the Huai Valley armies of Li Hung-chang, for instance—neither Tsêng nor Li ever used them to advance their personal fortunes. But Yüan Shih-k'ai did otherwise. Like many militarists during the later years of the T'ang Dynasty, Yüan for years kept his hold on the commanders of the New Army divisions, and they, in turn, imitated him by keeping their hold on the inferior commanders.

As has been noted, after the Revolution of 1911 Yüan Shih-k'ai made full use of his military following to achieve his political aims, and his military game was not brought to an end until the same game was turned against him. Yüan Shih-k'ai's death in 1916 caused the Northern militarists, known as the Pei-yang military faction,⁷ to disintegrate into the Tuan Ch'i-jui and Fêng Kuo-chang cliques. Because Tuan Ch'i-jui and Fêng Kuo-chang came respectively from Anhwei and Chihli Provinces, the two cliques became known as the Anhwei and Chihli cliques. When Fêng Kuo-chang lost his influence, Ts'ao K'un and, later, Wu P'ei-fu emerged as the leaders of the Chihli clique. By the beginning of 1918 Chang Tso-lin of Mukden had already gained sufficient strength to count fully as the leader of another powerful clique in the military scene. He was not a member of Yüan Shih-k'ai's old military group, but his clique, based on the northeastern provinces, was also considered a Pei-yang military element.

After Yüan Shih-k'ai's death, in the South and in the southwestern provinces there also grew up a number of militarists, who however, had no affiliation whatsoever with those in the North. These militarists often allied themselves with whatever separatist regime there was in Canton or nearby. But they never gave their wholehearted support to anyone. Thus, every time when Sun Yat-sen attempted to set up a revolutionary regime in Canton, in addition to waging a war on the militarists in the North, he was compelled to deal with those in the South. Such deals always tended to compromise his principles and circumscribe his freedom of action. It was not until his party had built up its own army with the assistance of Soviet Russia that the Southern militarists were eliminated.

In short, from the year of Yüan Shih-k'ai's death in 1916

to the year of Chang Tso-lin's end in 1928, the multitudinous alliances, counteralliances, struggles, and open wars among these military cliques ravaged China almost without interruption. No fixed principles and no enduring loyalties marked the cliques. An ally of yesterday could be an enemy of today, and the enemy of today could again become a comrade of tomorrow. A military clique could invite somebody to be the president today, but the next day it might denounce him and drive him out of office. Constitutions and politics reflected the same unstable and capricious attitude. The only real interest of each clique was to maintain itself in power, preferably at the seat of the central government,⁸ or, if that were not possible, at least in certain provinces.

With the exception of the core of Sun Yat-sen's party, all the parties and political groups of this period were composed of members of the parliaments who were united, not for the realization of any program beneficial to the nation, but for personal advantages with men of power. At first, the most powerful man was Tuan Ch'i-jui, who controlled the central government and the Anhwei military clique, but in later days he could be any militarist, whether in the central government or the provinces. This entanglement of politicians with militarists made the Chinese government of his period not only unstable but full of scandal.

During the first stage of this period, the militarists and politicians who were struggling for the control of the government in Peking still brought up the question of legitimacy as a pretext. Thus, when Li Yüan-hung succeeded to the presidency after Yüan Shih-k'ai's death, there was this controversy, as has been noted earlier. Later, after General Chang Hsün's attempted Manchu restoration in 1917, Fêng Kuo-chang stepped into the presidency. At that time there arose first the issue of reviving the Provisional Constitution and second the issue of restoring the old Parliament previously dissolved by President Li Yüan-hung at Chang Hsün's command. Fêng Kuo-chang was elected Vice-President by the old Parliament in accordance with the Provisional Constitution. If the Provisional Constitution were not revived and the old Parliament were not restored, on what constitutional basis could Fêng Kuo-chang be installed as President? That was the issue raised by the Canton regime, which, set up in 1917, called itself the "Constitution-Protecting Government." The peace negotiations of 1919 between the North and South failed, partly because the two sides could not agree on the question of reinstating the Provisional Constitution and the Parliament.⁹

When the old Parliament was again restored in Peking in 1922, there was a new controversy as to whether the new members, who had been substituted for the old members absent from the sessions when that Parliament met in Canton in 1918-20, were to continue in office or whether the old members, disqualified by the Parliament in Canton for their absence, were to be seated.¹⁰ This controversy in turn arose from the dispute over the legitimacy of the Canton sessions of that Parliament. It was decided by the members who met in 1922 in Peking that the Canton sessions were illegal and that, therefore, the new substitute members could not be members of the Parliament in 1922.

Shortly after this controversy was over, the issue over the legality of General Ts'ao K'un's presidency in 1923 once more led to a schism within the Parliament, although it did not prevent General Ts'ao from assuming his office in apparent accord with constitutional requirements.¹¹

After the arrest of President Ts'ao K'un in November, 1924, the garb of legitimacy was, however, undisguisedly given up by the militarists and politicians. General Tuan Ch'í-jui's inauguration as the "Provisional Chief Executive" in November, 1924, and Generalissimo Chang Tso-lin's establishment of the "Military Government" in June, 1926, were frankly admitted to be the results of political necessity, with no attempt to secure constitutional justification. This marked difference has made many students of Chinese politics consider the arrest of President Ts'ao K'un as the demarcation between the two stages of the constitutional development of China from Yüan Shih-k'ai's death to the conclusion of the Kuomintang's Northern Expedition. During the first stage from 1916 to 1924, the Provisional Constitution was, for the most part, nominally the nation's fundamental law. The remainder of this chapter will be devoted to examining how the various agencies of the government in Peking during this stage actually functioned. The next chapter will consider the latter stage.

THE PRESIDENCY FROM YÜAN'S DEATH TO THE ARREST OF PRESIDENT TS'AO K'UN

During the period from Yüan Shih-k'ai's death in June, 1916, to the arrest of President Ts'ao K'un in November, 1924, four persons occupied the Presidency, with Li Yüan-hung serving two terms.

The Presidency During Li Yüan-hung's First Term of Office

Li Yüan-hung succeeded Yüan Shih-k'ai as President upon

the latter's death in June, 1916, and his first term of office came to an end with his resignation after the attempted restoration of the Manchu monarchy by General Chang Hsün in the summer of 1917. During this period Li Yüan-hung, as President, never assumed the dominating position in the government which had been Yüan Shih-k'ai's by special virtue of his personality and ability. President Li played a minor role, and the real executive power descended to the Premier.

From the constitutional standpoint, the fact that the direction of the administration became vested in the Premier instead of the President should be hailed, indeed, as a step toward strict constitutionalism. The Provisional Constitution, revived upon the death of Yüan Shih-k'ai, had stipulated the relationship between the President and the Premier as such. But in reality the change represented no advancement whatsoever in that direction. The change was not the result of anyone's desire to uphold legitimacy, but rather the child of the special circumstances at the time. As such, it could not promise a smooth-working machinery of government over a long period.

But let us first examine the special circumstances which compelled President Li to play a subordinate role. First and foremost, the fact that President Li was not a leader of the powerful Pei-yang military faction actually had from the outset deprived his position of military support and strength—indispensable factors in exercising political influence in China at any time. On the other hand, the Premier under him, General Tuan Ch'i-jui, was one of the two leaders of the Pei-yang military faction after the death of Yüan Shih-k'ai. Thus, power naturally moved to the hands of the Premier.

Secondly, President Li, unlike President Yüan Shih-k'ai, had had no connection with the officialdom in Peking prior to his assumption of the presidency. Thus, he was also deprived of the privilege of influencing the administration through intrigue with civilian followers in the government. It is true that he had allies in the Parliament, and certain members of Premier Tuan's Cabinet were also close to him, but these elements were never in a position positively to strengthen his authority, since they themselves were unable to compete with the Pei-yang military faction and its political alliances.¹²

Finally, President Li's lack of a strong personality and of the knowledge of political manipulation further prevented him from bettering his position. Indeed, it was neither great brilliance of mind nor ability that made the Pei-yang military faction and the Southern Confederacy welcome him to the

presidency in the first place. It was hoped that he would play the part of a moderator and seek to bring harmony to a mass of heterogeneous elements after the death of Yüan Shih-k'ai.

The weakness of Li's presidency was first revealed by the fact that Tuan Ch'i-jui's premiership was not even Li's own choice, but was a legacy from the preceding administration. In addition, he was unable to exercise any influence on the selection of individual members of Premier Tuan's Cabinet.

In spite of the fact that President Li Yüan-hung was originally expected to be a moderator in the government, he was immediately utilized by those who wished to check Premier Tuan's authority. With the full comprehension that President Li would be easily outmaneuvered by his Premier, especially when the latter was assisted by the ambitious and highhanded Hsü Shu-tsêng, secretary-general to the Cabinet, the anti-Tuan elements in the Parliament recommended the forceful Ting Shih-i as President Li's secretary-general.¹³ This naturally led to friction between the Cabinet and the presidential office. The friction took the form of the President's refusing to affix his signature to measures which the Cabinet submitted for promulgation. Premier Tuan, however, insisted that, since the Provisional Constitution provided a responsible cabinet government, the President was required to give his sanction unconditionally to every measure that the Cabinet might have decided.

Apparently being unable to defy the Premier, Ting Shih-i resigned his post at the end of 1916, issuing upon resignation a statement protesting the Premier's attitude toward the President. From this statement one can fully understand what role the President played at the time. Mr. Ting says in part:¹⁴

Before the convocation of a Cabinet meeting, the President was never given a copy of the agenda, nor, after a Cabinet meeting, was he ever informed about what had taken place there. The President usually did not know what were the legislative objectives when he was called upon to promulgate a law. In commissioning an official, the President also scarcely knew the person's past history. It was not unusual that for weeks the Premier failed to brief the President on national affairs. When the secretary-general to the Cabinet, who usually came to the presidential office to get the presidential signature on measures decided by the Cabinet, was asked how certain things were decided upon, his reply was always that they have been so decided by the Cabinet, which would assume the responsibility.

The President could, therefore, see nothing and hear nothing about the policy of the government. Every day he was expected to fulfill his duties by merely affixing his signature to the measures prepared for him by the Cabinet When the appointment of Ts'ao Ju-lin as Minister to Japan had been decided upon, the Japanese Emperor knew about it one month earlier than the President. During the Sino-Japanese negotiations, the President was also denied the privilege of seeing the communications between the Cabinet and our Minister in Tokyo.

Mr. Ting's departure from the presidential office did not end the friction between President Li and Premier Tuan. But when the President failed to prevent the Cabinet from severing diplomatic relations with Germany in March, 1917, the question of supremacy within the executive branch of government was settled in favor of the Premier.¹⁵ Later, in May, 1917, when Li acted to dismiss Premier Tuan, thus supporting the Parliament, which the military governors of the provinces were asking to be dissolved in support of the Premier's war policy toward Germany, it only served as a blow against the President himself.¹⁶ It is to be noted that as soon as Li dismissed Tuan, Tuan openly incited the Pei-yang military faction to denounce the President as well as the Parliament. On May 29, General Ni Szŭ-ch'ung, Military Governor of Anhwei, first declared his independence of the central government. Shortly, military governors of seven other provinces followed suit.¹⁷ Meanwhile, President Li's newly appointed Premier Li Ching-hsi, whose appointment had been confirmed by the Parliament, refused to come to Peking to assume office or to attempt to form a Cabinet in opposition to the wishes of the rebellious military governors.¹⁸ In this situation, there was a virtual breakdown of the government in Peking. In desperation, Li Yŭan-hung called on General Chang Hsün to intercede. Chang Hsün accepted the invitation. While his troops were proceeding from Hsüchow to Peking, he advised the dissolution of the Parliament. When this was reluctantly done by President Li on June 12,¹⁹ Chang Hsün himself entered the capital. On July 1, he effected the restoration of the Manchu Dynasty, which he had desired for a long time.

Since Chang Hsün was not strong militarily, as soon as the Manchus were restored, Tuan Ch'i-jui, who had been apparently on good terms with Chang Hsün a month earlier,²⁰ unfurled the Republican banner. Enjoying the loyal support of a considerable number of forces in and around Peking, he was

able quickly to crush Chang Hsün's resurrected dynasty. On July 14 he triumphantly re-entered Peking to resume the premiership (to which he had been reappointed by President Li Yüan-hung amidst the coup d'état of Chang Hsün). Though Tuan Ch'i-jui owed his premiership to Li's appointment, the latter was not allowed to continue as President. Fêng Kuo-chang, who had been elected Vice-President when Li Yüan-hung had assumed the presidency in 1916, succeeded instead.²¹ Thus Li's first term in the presidency was terminated.

The Presidency Under Fêng Kuo-chang

As has been mentioned, Fêng Kuo-chang and Tuan Ch'i-jui were, next to Yüan Shih-k'ai, the leaders of the Pei-yang military faction and as such had long been rivals. The friction between the two began, therefore, almost as soon as they were brought together in the close relationship of president and premier. The conflict first developed over the question of the steps to be taken against the so-called "Constitution-Protecting Government" in the South. This organization was established in Canton on September 1, 1917, by Sun Yat-sen and several hundred members of the old Parliament and by a number of militarists in the South as a protest against Premier Tuan's failure to restore the old Parliament.²² The Premier desired to take active military action, while the president's policy was rather one of conciliation.

Searching the motivations behind their respective policies, none appears free from selfishness. Premier Tuan, of course, was creating a new Parliament with the expectation that through the Chin-pu Tang he would be able to control the new legislature, thereby having a free hand in the government. Consequently, Tuan wished to suppress the Southern regime which consisted largely of the members of the old Parliament. President Fêng, in order to have similar party backing, preferred to conciliate the South in order to gain the collaboration of the Kuomintang members who would certainly represent that section of the country.

During the struggle, though Tuan Ch'i-jui was for a while forced to give up the premiership,²³ President Fêng eventually found that Tuan Ch'i-jui's following was too strong to defy and that he had to be restored to the premiership.²⁴ As a result, the President also gave way to the Premier on the question how to treat the South. It is to be noted that the determining factor in the struggle for political hegemony was still military strength. It is true that President Fêng had his military followers and that he had deliberately placed them in many

strategic positions in the Yangtze Valley before he consented to leave Nanking for Peking to take over the presidency.²⁵ But it appears that Tuan Ch'í-jui's clique had gained the upper hand at the time, especially with the aid of Chang Tso-lin after the spring of 1918. Failure to secure the hegemony did not mean that President Fêng was, like President Li Yüan-hung, to be ruthlessly pushed around, so long as he still retained him military following. A facesaving formula was worked out, according to which a new President was to be elected upon the expiration of Fêng's term of office, and Tuan Ch'í-jui was to resign from the premiership at the same time.²⁶ This was only a facesaving formula because, while Fêng was thereby retired from power entirely, Tuan Ch'í-jui was still able to dominate the government for some time to come by reason of his post as chairman of the "War Participation Bureau" and by his control of the new Parliament elected in the autumn of 1918.²⁷

The Presidency Under Hsü Shih-ch'ang

Hsü Shih-ch'ang was elected President by the new Parliament on September 1, 1918, to replace Fêng Kuo-chang. From its inception, his presidency was destined to be a weak one. Although he was a man of administrative experience, he did not have a military following of his own. The stated objective of the new Parliament in electing him as President was to have him bring about harmony within both the Pei-yang military faction and the nation as a whole. The expectation that he would be able to bring about harmony within the Pei-yang military faction was based upon the fact that he had been connected closely with the faction from its early history and had been respected by all elements of the faction. The expectation that he would also be able to bring about harmony within the country as a whole was due to the hope that his moderate and amicable attitude might induce the South to come to terms with the government.²⁸

But another more important, though unstated, reason for the election of Hsü Shih-ch'ang was, as mentioned earlier, the elimination of Fêng Kuo-chang from the government while enabling Tuan Ch'í-jui to keep control of the administration.²⁹

Thus actually political contradictions conferred the presidency on Hsü, and he indeed maintained his position for almost four years, during which these contradictions were not clearly settled. The consequences were that Hsü Shih-ch'ang, as President, was not only unable to take any drastic measure to achieve harmony within either the Pei-yang military faction

or the country but appeared to be even somewhat unwilling to consolidate the country if that would endanger his own interests.³⁰

Historically speaking, from his inauguration in October 1918 until the military conflict between the Chihli and Anhwei cliques in July 1920, President Hsü sometimes was "politely" used by Tuan Ch'i-jui and his Anhwei clique as a cloak behind which they governed and sometimes was even outwardly dictated to. After the Anhwei clique was defeated by the Chihli clique with the aid of Chang Tso-lin, President Hsü became the tool of the coalition of the Chihli-Fêngtien cliques, with the Fêngtien clique as the dominant group.³¹ Under such circumstances, the President held the reins of government very much like a circus rider standing astride two galloping horses. He had to hold them together and maintain his balance.³² Since Chang Tso-lin was more assertive, the balance was in constant danger of disruption. Finally, in April and May, 1922, the break occurred. Chang Tso-lin was defeated during the first Chihli-Fêngtien conflict, and Hsü Shih-ch'ang also was expelled for his partisanship toward Liang Shih-i's Cabinet, which had often done the bidding of Chang Tso-lin and thus had incurred the hatred of Wu P'ei-fu.³³

The Presidency During Li Yüan-hung's Second Term

After the Chihli military clique had driven Chang Tso-lin back to Manchuria, Ts'ao K'un and Wu P'ei-fu decided to restore the old Parliament, which had been twice illegally dissolved, and to reinstate Li Yüan-hung as President. It is important to note that at this time Ts'ao and Wu's action in doing this was not for the sake of upholding legitimacy, and that their real aims were to expel Hsü Shih-ch'ang³⁴ and to deprive the South of the banner under which it had set up a separate regime.³⁵ It was their hope that in so doing the Chihli clique could not only thoroughly control the government in Peking but also do away with the disunity between North and South. To achieve national harmony was indeed a desirable thing. But if the harmony sought for were primarily designed to enlarge the selfish interests of a particular faction, it certainly would produce no good results.

Thus when Li Yüan-hung was called upon to return to the presidency, Chang Ping-lin, a noted scholar and a friend of Sun Yat-sen, secretly sent a letter to Li pointing out that the Chihli clique would use him only as an instrument for their own purposes and that he should immediately refrain from accepting the offer.³⁶ But Li, after securing a promise, which

was never to be fulfilled, from the Chihli clique to abolish military governorships and reduce armed forces,³⁷ went to Peking on June 11, 1922, and for the second time assumed the presidency.³⁸

His position at this time proved to be not so different from that during his first term. His constitutional privilege of nominating the Premier was even done away with. Thus when he nominated T'ang Shao-i as Premier upon his reassumption of the presidency, he found that his nominee, who had been confirmed by the Parliament, dared not come to Peking in view of the unfavorable reaction of the Chihli clique toward his appointment. Again, when Wang Ch'ung-hui's Cabinet resigned in November, 1922, Li nominated Wang Ta-hsieh as the successor. But as General Ts'ao K'un's headquarters expressed dissatisfaction, Li had to invite Chang Shao-tsêng, a relative of General Wu P'ei-fu and a close friend of General Ts'ao K'un, to form a Cabinet instead.³⁹

As for government policies, the Cabinet, which was always closely connected with the Chihli clique, took full responsibility. It is to be noted that President Li's influence in the government at this time was felt even less than several years earlier, because many members of the Parliament who had supported him during his first term now had been bought away by the Chihli clique. Consequently, he became a political figure without any substantial backing.

Li was not allowed to stay in the presidency even as a figurehead, without discomfort. His authorization of the use of \$1,200,000 Customs Construction Fund for financing the Parliament which was making the permanent constitution caused many scurrilous charges against him even from the Cabinet.⁴⁰

Li's political fortune was not terminated until General Ts'ao K'un was sufficiently well prepared to get himself elected president. The way by which Li was ousted perhaps represented the tyranny of warlordism in a most characteristic way. It may be briefly described as follows: After Premier Chang Shao-tsêng tendered his resignation and left Peking on June 6, 1923, units of the Peking garrison, including the metropolitan police and troops of General Fêng Yü-hsiang, then a subordinate of General Ts'ao K'un, demonstrated before President Li's residence, demanding that the President assume the responsibility for financing them; should he refuse they threatened to relinquish their duties. When the President failed to meet their demands, they cut off the telephone and water lines of the President's residence and went on

strike. Being virtually a prisoner, the President appealed to the commanders of the garrison to discipline their soldiers. But they responded to his appeal by tendering their own resignations. Thus for almost one week, Li was in a helpless situation in Peking. Knowing that the demonstrations were designed to secure his removal from the presidency and to pave the way for the elevation of Ts'ao K'un to the post, Li left Peking on June 13 for Tientsin with the presidential seal, apparently intending to exercise authority there. But the Chihli clique was determined to do away with him, so he was held prisoner on arrival at the railway station in Tientsin until he gave up the presidential seal and signed the resignation proclamation prepared for him by General Wang Ch'êng-ping, Governor of Chihli and a close follower of General Ts'ao K'un.⁴¹ This ended Li's second term in the presidency and concluded his political life forever.

The Presidency Under Ts'ao K'un

Shortly after Li Yüan-hung's resignation, a group of General Ts'ao K'un's followers proceeded to get Ts'ao elected as the next President.⁴² The Parliament, which was to elect the President, was unable to obtain a quorum because of the absence of several hundred members who were trying to assemble at Shanghai in protest at the removal of Li Yüan-hung. Wholesale bribery was applied, therefore, to induce the parliamentarians to return to Peking and to cast their ballots for General Ts'ao K'un. The device proved successful, and, on October 5 the Parliament elected Ts'ao President by the necessary majority.⁴³

Apparently for the purpose of diverting attention from its infamous behavior during the presidential election, the Parliament hurriedly adopted the permanent constitution subsequently known as the "Ts'ao K'un Constitution," and the instrument was promulgated on October 10 in connection with the inauguration of President Ts'ao.⁴⁴

President Ts'ao was able to dominate the Cabinet, but he himself was actually, in turn, at the mercy of his follower, General Wu P'ei-fu, who had become the most powerful figure within the Chihli military clique. Outside of the Chihli military clique, the authority of President Ts'ao and his government in Peking was only nominally respected or had been openly challenged from the outset. Thus, after he had been in the presidency for about a year, there was still no unification of North and South. By this time Sun Yat-sen had gone back to Canton and was building up a new regime of a revo-

lutionary nature.⁴⁵ Neither was there consolidation in the North, for the remnants of the Anhwei military clique were still dangerous, and Chang Tso-lin was gaining strength day by day in Manchuria.

General Wu P'ei-fu's policy was, however, the unification of the country by force. This caused all of his leading opponents to enter into talks with each other and plan a united front against the Chihli military clique. The conflagration started at the mouth of the Yangtze. The Military Governor of Chekiang, Lu Yung-hsiang, was the only Anhwei militarist to remain in power after the debacle of that faction in 1920. In addition to controlling Chekiang, he had established himself in and exercised absolute authority over the Shanghai District, which is situated in Kiangsu Province. This district was then the center of an enormous illicit opium traffic, from which the local officials were believed to be deriving many millions of dollars annually.⁴⁶ There had been a constant friction between the Military Governor of Chekiang, and the Military Governor of Kiangsu, Ch'i Hsieh-yüan, who was one of the adherents of the Chihli clique, over the status of Shanghai. Early in September, 1924, matters came to a head, and the Military Governor of Kiangsu announced his intention to recover Shanghai by force. Chang Tso-lin, the Manchurian warlord, immediately declared that he would not remain neutral in this conflict, and Wu P'ei-fu accepted the challenge.

Enormous forces under Wu P'ei-fu's personal command were concentrated on the Chihli-Manchurian border, in the neighborhood of Shan-hai Kuan, to repel the Manchurian invasion. The defense of Chihli, in the Jehol region, was entrusted to the "Christian" General, Fêng Yü-hsiang. The Military Governor of Kiangsu, with the assistance of his colleague in Fukien, Sun Ch'uan-fang, completely defeated the Chekiang forces, and Lu Yung-hsiang fled from Shanghai to Japan on October 13.

Meanwhile, heavy but indecisive fighting had been taking place on the Shan-hai Kuan front. But on October 22, Fêng Yü-hsiang suddenly appeared in Peking at the head of his army, occupied the capital, and declared for peace.⁴⁷ The Chihli forces at Shan-hai Kuan collapsed. Wu P'ei-fu, after a futile attempt to organize another front near Tientsin, fled by sea to Shanghai and returned to his old headquarters at Loyang. He was compelled to flee again and, after a brief stay at Wuchang, withdrew to Yochou. Fêng Yü-hsiang temporarily assumed control of the central government, imprisoned President Ts'ao K'un, and forthwith ejected the

former Manchu Emperor from the Winter Palace, where he had been residing ever since his abdication, canceling the the Articles on the Favorable Treatment of the Manchu Court after Abdication.

THE CABINET FROM YÜAN'S DEATH TO THE ARREST OF PRESIDENT TS'AO K'UN

Generally speaking, during this period the Cabinet, rather than the President, was the real center of executive power. Attention, therefore, should be directed to the special features relating to the composition of a Cabinet, the relationship between the Cabinet and the legislature, and the impact of warlordism upon the Cabinet.

Throughout this period, no single harmonious and coherent Cabinet was ever formed. The Cabinet usually consisted of persons affiliated not only with the various political groups in the legislature (while there was one in existence) but also with the most powerful military cliques which happened to be in control of Peking. As with Cabinets in Yüan Shih-k'ai's time, the legislative confirmation of the appointment of a Cabinet did not necessarily mean that the Cabinet so confirmed would enjoy the consolidated support of the majority of the legislature while they were in office. Except in very few cases, the legislature rarely rejected a person nominated to fill a post in a Cabinet, since political necessity always predetermined the assignments.

Since a Cabinet was usually not a cohesive team, internal dissensions were bound to occur. The notable examples are as follows: In 1917 when Tuan Ch'í-jui was Premier, the members of his Cabinet were bitterly divided on the issue whether China should closely affiliate itself with the Anglo-American powers or with Japan in entering into the war against Germany.⁴⁸ In 1919 Acting Premier Kung Hsin-chan also was at odds with Minister of Army, General Chin Yün-p'êng over the issue whether a domestic loan should be floated before the new Parliament was able to pass upon the matter.⁴⁹ This eventually constituted one of the several reasons which compelled the Acting Premier to resign. When General Chin Yün-p'êng himself became Premier in the same year, he immediately discovered that the three ministers who belonged to the An-fu Club were beyond his control, and he had to submit his resignation to President Hsü Shih-ch'ang four times within about ten months.⁵⁰ In 1920-21 when General Chin again held the premiership under the cosponsorship of the Chihli and Manchurian military cliques, Minister of Finance

Chou Tzŭ-ch'i and Minister of Communications Yeh Kung-ch'o, leaders of the Chiao-t'ung Clique, were not coöperative toward him and especially toward his financial policy.⁵¹ This internal conflict was not eliminated until Generals Chang Tso-lin and Ts'ao K'un held a conference in Tientsin in April, 1921, and decided that General Chin's Cabinet should be reorganized.⁵² The last notable example was the disagreement over the government's financial policy between Premier Sun Pao-ch'i and Minister of Finance Wang K'o-min in 1924, and it finally led to the resignation of the Premier.⁵³

The lack of cohesion within the Cabinet was but one aspect of the general instability of government. During the period under discussion, twenty-four Cabinets were successively appointed, and the average life of each Cabinet was about four months. Since the tenure of civil officials was not adequately safeguarded, every change of Cabinets naturally involved a large-scale turnover of departmental personnel.

Moreover, the lack of harmony within the Cabinet tended to reduce the authority and influence of a Premier in connection with the supervision and control over the work of the various executive departments. The situation was further complicated by the fact that a Premier did not have the legal right to dismiss his colleagues. Thus, in the event of a serious clash of opinion between a Premier and his colleagues, the Premier would either have to listen to their opinions in order to save his Cabinet or to resign with them so as to clear the way to form a new Cabinet, debarring those who had been in disagreement with him.⁵⁴ The latter course could not be taken unless the Premier was sure that the existing political situation would permit him to form a new administration. Otherwise, he himself would have to resign, if he could not control his colleagues' insubordination.⁵⁵ The only incumbent in the Premiership during this period who dominated his Cabinet was Tuan Ch'i-jui. This was due to his personal prestige and particularly to the consolidated support of the Anhwei military clique, of which he was the leader.

The fact was that neither the Cabinet nor the legislature could supervise and guide the other, a situation which had prevailed in Yüan Shih-k'ai's days. This was, of course, not strictly true while the so-called "new Parliament" was in existence during the years of 1918–20. The new Parliament, which was dominated by the An-fu Club, a political association of the followers of General Tuan Ch'i-jui, appeared to be somewhat different from a legislature of the conventional kind. While it was not particularly concerned with the improve-

ment of the administration by genuine supervision and intelligent criticism of executive activities, it was active and influential in creating trouble for the administrations which its political leader disliked.

Nor can the events after the old Parliament's second revival in 1922 be taken as a good illustration of our point. The Parliament by that time had become nothing more than a thoroughly demoralized tool of the Chihli military clique. A Cabinet really had little to do with the Parliament, so that no meaningful relationships between the two organs existed.⁵⁶

Perhaps a typical case was the one which existed during the period between the first revival of the old Parliament in August, 1916, and the second illegal dissolution of the same in June, 1917. As has been already mentioned, by the time the Parliament had been revived General Tuan Ch'i-jui's premiership was generally regarded as an accomplished fact; the Parliament could not but give its confirmation to his status in spite of the fact that the majority of the members of the Parliament were politically in discord with him. Strained relations between the Premier and the Parliament accordingly followed. They were first manifested by the Parliament's rejection of several nominations to Cabinet positions. The loan policy of the government was also continually criticized. Constant interpellations were addressed to the government concerning the administration of the nation, and there was a growing tendency to heckle members of the Cabinet when they were forced to appear in Parliament.

As one observer indicated, it is hard to apportion the blame for the strained relations existing between the different branches of the government.⁵⁷ Certainly no one branch was entirely responsible. To quote Mr. Vinacke:

Parliament showed again most of the tendencies which had weakened its control over the government during the first months of the Republic: a disposition to talk and do nothing; to obstruct the work of administration and reorganization needlessly; and to censure the Cabinet for acting on its own initiative when it was found that no direction of policy was forthcoming from Parliament. Parliament wished to feel that it held the control, but refused to exert itself to assume the responsibilities placed upon it as the controlling and directing organ.

On the other hand the Premier was partly to blame for the opposition to his policies in Parliament. The Constitution provided a way by which the Cabinet could assume

the direction of affairs in the legislative body—the Ministers having the right to appear and explain their policies to the members of Parliament. But from the first, Tuan Ch'i-jui looked upon a legislature as an unnecessary evil in government. Following the lead of Yüan Shih-k'ai, he tried to carry on the administration without consulting the wishes of the representatives, only appearing before them to ask their consent for work already undertaken. When a Cabinet position was to be filled no attempt was made to discover the wishes of Parliament and then make an acceptable appointment. The nomination was made first and its acceptability discovered later when action was taken in Parliament. In some cases, without doubt, an entirely unacceptable candidate was brought forward with the expectation that after he had been rejected Parliament would be willing to accept the real candidate of the government. It is true that the opinion of one of the parties (the Chin-pu Tang) was usually ascertained and its support secured, but that party, which was really that of the government, was in the minority in Parliament so that its support meant little.

In such a situation, the defects of the Provisional Constitution as they concerned the relationships between the executive and legislative branches were once more clearly revealed. Had the Cabinet been given the power to dissolve the Parliament or had the Parliament been empowered with the weapon of ousting a Cabinet by a vote of lack of confidence, unharmonious relations between two organs could be prevented from developing into a deadlock by resorting to one of the two solutions. In the absence of these provisions, serious disagreement between the two agencies of government could lead only to misfortune. That was exactly what had happened in Yüan Shih-k'ai's time and what took place on this later occasion. Thus when the issue of declaring war upon Germany in 1917 put Premier Tuan Ch'i-jui in a bitter controversy with the Parliament, neither one of them could find any legal means of deposing the other. Eventually, the situation gave rise to intervention in national politics by the militarists, which, in turn, led to the second illegal dissolution of the Parliament and caused the establishment of a separate regime in the South under the banner of legitimacy. One may argue that, if the social environment is unfavorable to a given political institution, even a perfectly designed machine cannot operate. At this time in Chinese history,

however, if the Provisional Constitution had provided better procedures for solving political deadlocks between the executive and the legislative arms, political and military conflicts would certainly have required different pretexts. One cannot avoid the possibility that they might have been averted in the first place. Particularly was this true of the struggles between the North and the South.

With the growth of warlordism, the militarists had become more important and powerful, and the Cabinet had been forced to deal with that group more than with the legislature. Indeed, the militarists had actually usurped all the important powers of the legislature, and a Cabinet ultimately had come to depend on their support. Thus the relationships between the Cabinet and the militarists are particularly worthy of attention.

Generally speaking, these relationships took the form of interference by the militarists in the work of the Cabinet in a variety of ways. First and foremost, the militarists had the actual power to make or unmake a Cabinet. For instance, the reinstatement of General Tuan Ch'i-jui as Premier after the coup d'état of Chang Hsü was entirely at the dictation of the Pei-yang military faction, and Tuan's formation of a new Cabinet in March, 1918, was again a political necessity, since most leaders of the Pei-yang military faction were in favor of General Tuan's belligerent policy toward the South. After the defeat of the Anhwei military clique in 1920, the two Cabinets under Premier Chin Yün-p'êng were nothing more than the children of the temporary union of the Chihli and Manchurian military cliques. When the Manchurian militarists got the upper hand in Peking in December, 1921, they made Liang Shih-i Premier without consultation with the Chihli military clique. After the Manchurian armies were driven out of China proper in 1922, all the Cabinets formed until President Ts'ao K'un's arrest in 1924 were organized in accordance with the desires of the Chihli military clique.

On the other hand, the Pei-yang militarists had prevented Premier Li Ching-hsi from taking office in May, 1917. Military followers of President Fêng Kuo-chang had compelled Premier Tuan Ch'i-jui to resign in November, 1917, by demanding a peaceful settlement with the South. In March, 1918, the resignation of Premier Wang Shih-chên's Cabinet was also forced by the militarists who were calling for a tough policy toward the South. The disbandment of General Chin Yün-p'êng's first Cabinet in the summer of 1920 was, of course, directly brought about by the setback of the Anhwei

military clique in the war with the Chihli militarists. Liang Shih-i secured the premiership with the support of the Manchurian clique, and his resignation one month later was caused solely by a circular telegram of General Wu P'ei-fu denouncing his Cabinet's pro-Japanese policy. The hesitation of T'ang Shao-i to assume the premiership which President Li Yüan-hung offered him in 1922 indicates a realization of the power of the Chihli military clique to kill a Cabinet from its inception. Wang Ta-hsieh's quick departure from the Premiership in 1923 offers another example of the fact that once the most prominent militarists had expressed an unfavorable feeling about a Cabinet, that Cabinet had to seek immediate dismissal.

The militarists also expressed opinions on the suitability of an individual minister in a Cabinet. Thus, though President Li appointed T'ang Shao-i Minister for Foreign Affairs in 1916, military leaders, holding a conference at Hsüchow, resolved that he was unfit for the post since he had been politically in disagreement with Premier Tuan. Because of this opposition, Mr. T'ang gave up the appointment, though he did make a statement protesting the unauthorized interference in government by the militarists.

The militarists further commented favorably or unfavorably upon the legislative and executive measures of the Cabinet. Not infrequently, they even set forth their own policies. In certain occasions their opinions were actively solicited by the Cabinet. For instance, in 1917 when Premier Tuan wanted to declare war upon Germany, he summoned the military governors of the various provinces to Peking and sought their counsel in a conference. When the Parliament refused to act upon the War Bill, which was submitted by the Cabinet upon the unanimous recommendation of the conference, the displeasure of the governors ultimately led to the illegal dissolution of the Parliament in June, 1917. While fights were going on between the North and South in the years 1917-19, leaders of the Anhwei and Chihli military cliques from time to time announced their views about the issues; and the course of the government was determined accordingly. The most notable example of the militarists' influence upon the measures of the Cabinet was General Wu P'ei-fu's denunciation of Premier Liang Shih-i in connection with the latter's instructions to the Chinese delegation to the Washington Conference in 1922 to make concessions to Japan so as to secure loans from the latter in return.

THE LEGISLATIVE BRANCH OF
GOVERNMENT FROM YÜAN'S DEATH TO
THE ARREST OF PRESIDENT TS'AO K'UN

The legislative branch of the government during this period was also characterized by desultoriness and inefficiency. Since its inefficiency has been observed earlier in connection with the relationships between the executive and the legislative branches of government, this section is concerned primarily with the history of its desultory existence and its changing political complexion.

When Li Yüan-hung became President in June, 1916, upon the death of Yüan Shih-k'ai, the old Parliament, which he had dissolved about two years earlier, was reconvened and the Provisional Constitution revived. At that time, the old political cleavage between the Kuomintang and Chin-pu Tang was still apparent, though neither of them was revived in name. The former members of the Kuomintang associated themselves under the banner of the Constitution-Discussion Society (Hsien-fa Shang-chüeh Hui). This group occupied about four hundred seats, but was badly split into several cliques.⁵⁹ Some owed allegiance to Sun Yat-sen, but others were largely opportunists, seeking merely for immediate political advantage with little regard for principles or ultimate consequences. The Chin-pu Tang was more fortunate in that, in the beginning, it was divided into only two such groups; the Constitution-Discussion Association (Hsien-fa T'ao-lun Hui), headed by T'ang Hua-lung, Liu Ch'ung-yu, Liang Shan-chi, and Li Kuo-chên, and the Constitution-Research Comrades' Association (Hsien-fa Yen-chiu T'ung-chih Hui), headed by Liang Ch'i-ch'ao, Wang Chia-hsiang and others. They were soon reunited into the Constitution-Research Association.⁶⁰ Although this party possessed no more than two hundred seats in the Parliament, it was at the time much more effective in politics than all the branches of the former Kuomintang combined. Besides the two major groups, at least ten tiny associations were loosely affiliated.⁶¹ Their members were either the proteges of General Tuan Ch'í-jui, who was Premier at the time, or political wanderers who tended to fall into line with the Constitution-Research Association on issues concerning the framing of a permanent constitution.

Generally speaking, the Constitution-Discussion Society, though a majority party in the Parliament, was at odds with Premier Tuan Ch'í-jui. The Constitution-Research Association on the other hand, under the leadership of Liang Ch'i-ch'ao

and T'ang Hua-lung, actively sought the favor of the Pei-yang military faction, and closely collaborated with Premier Tuan Ch'í-jui in his struggle with the Constitution-Discussion Society. The behavior of the Constitution-Research Association in this connection was similar to that of its forerunner, the Chin-pu Tang, before the Parliament had been dissolved by Yüan Shih-k'ai in 1913. In their opposition to the radical tendencies of their colleagues, members of the Association undoubtedly had forgotten the lesson that they had learned during Yüan Shih-k'ai's last few days—that the Pei-yang militarists could not be relied upon to serve the cause of republicanism.

The clash between the two major political groups in the Parliament reached its climax in the discussion of the provincial system. It is to be noted that as soon as the Parliament was restored in 1916 the work of constitution-framing was taken up at the point where it had been dropped in 1913. The provincial system, which had been omitted from the draft prepared in 1913 because of lack of concurrence among the framers, once again became the point of disagreement. The issue concerned the relation of the provinces to the central government. The Constitution-Discussion Society desired to see the provincial system freed from the control of Peking, the provinces to be in effect self-governing states united only when mutual interests made union advisable. Under this de-centralized system the governor of the province would have been an elected official responsible partly to the central government and partly to the provincial assembly.

On the other hand, the Constitution-Research Association insisted that the provinces should be administrative areas with officials appointed by the President and subject to his direction and control.

In order to carry out their programs, the Constitution-Research Association appealed to the military governors for support, but no significant action was immediately taken by the latter. On April 25, 1917, Premier Tuan Ch'í-jui called a Conference of Military Governors in Peking to discuss the problem of whether China should declare war on Germany. They decided to support the Premier in declaring war, but the Parliament refused to pass the War Bill. Thus the military governors were seriously displeased and urged that the Parliament should be dissolved. As mentioned earlier, President Li Yüan-hung at first refused to honor the request of the militarists on the grounds that he did not have the constitutional power to dissolve the legislature, but on June 10

he issued an edict dissolving the Parliament. His action was at the demand of General Chang Hsün, whom he had summoned to Peking for help and consultation.

Quickly overthrowing Chang Hsün's resurrected dynasty, which took place shortly after the dissolution of the Parliament, Premier Tuan Ch'i-jui decided not to revive the old Parliament, which had been hostile to him and to the Pei-yang military clique in the past. Instead he suggested the calling, in imitation of the precedent of the first year of the Republic, of a new "National Council" (Ts'an-i Yüan) to exercise the powers of Parliament. This suggestion was seconded by Liang Ch'ih-ch'ao and T'ang Hua-lung, but with the modification that the new National Council should confine itself to the task of enacting a new set of laws regarding the organization and electoral procedures of Parliament. Eventually Premier Tuan adopted their views, which were incorporated into a Presidential edict issued on September 29, 1918. As a result, the provinces and other areas proceeded to send their delegates to the Council in accordance with the stipulations of Article 18 of the Provisional Constitution.⁶²

Despite the protest of many members of the old Parliament, who were now assembling in Canton in support of Sun Yat-sen's "Constitution-Protecting Government,"⁶³ the new National Council met on November 10. Having performed its sole function of amending the organic and electoral laws of Parliament, the Council was dissolved in August, 1918.

According to the amended laws, the new Parliament still consisted of two chambers: the Senate and the House of Representatives.⁶⁴ In order that the new Parliament might be easily controlled, the membership of both houses was reduced and the suffrage was further limited. Finally, efforts were made to strengthen the hold of the northern provinces and to assure a quorum for action in case the South did not choose to elect representatives. This was done by reapportioning the representation of the provinces.⁶⁵

The election of the new Parliament took place in June, 1918. It is to be noted that the five southwestern provinces under the jurisdiction of the "Constitution-Protecting Government" did not hold an election, since they were still demanding the restoration of the old Parliament.⁶⁶ Disturbed local conditions prevented Hupei, Hunan, and Shensi from electing any delegates. Representatives of Mongolia, Tibet, and Chinghai were appointed by the government in Peking. Fourteen other provinces did hold elections, but these were completely manipulated and controlled by the An-fu Club. As had been expected,

after the new Parliament was convoked on August 12, 1918, the members of the An-fu Club constituted an absolute majority within that body, possessing about 330 seats in the two Houses. The second largest party was the Chiao-t'ung Clique, possessing more than one hundred seats. The Constitution-Research Association, which had strongly urged the establishment of a new Parliament and had actively competed with the An-fu Club during the election, secured only about twenty seats. The so-called New Chiao-t'ung Clique and the Hsien-chêng T'ao-lun Hui (the Constitution Debate Society) each obtained several seats.

It is worthwhile to make a brief survey of these parties. The An-fu Club, was organized by the close followers of General Tuan Ch'i-jui in March, 1918. It immediately proceeded to influence the election of the new Parliament. Since the Parliament subsequently elected was dominated by members of this group, it was nicknamed the "An-fu Parliament." The club was nothing more than a political instrument of General Tuan, or the Anhwei military clique.⁶⁷ It lacked any genuine political program. Nor was its behavior upright. After the defeat of the Anhwei military clique in 1920, the An-fu Club was ordered to disband.

The Chiao-t'ung Clique was an association of the leading figures who controlled the Bank of Communications. The source of their influence was money. Liang Shih-i, Chu Ch'i-chin, Chou Tzŭ-ch'i, Yeh Kung-ch'o, and Lung Chien-chang were the best-known members of this clique. It had been informally in existence in Yüan Shih-k'ai's days, but it had little strength in the old Parliament. Like the An-fu Club, it was a party without political principles. It is not an exaggeration to say that it was closely connected with the Pei-yang military faction from the outset, and may be regarded as one of the several sections of the old Peking officialdom. After the defeat of the Anhwei military clique, the Chiao-t'ung Clique seems to have maintained a political alliance with General Chang Tso-lin.

The New Chiao-t'ung Clique was headed by Ts'ao Ju-lin and Lu Tsung-yŭ, who formed a separate leadership within the old Chiao-t'ung Clique after the death of Yüan Shih-k'ai. In the new Parliament, the New Chiao-t'ung Clique was in alliance with the Hsien-chêng T'ao-lung Hui, which was led by Sun Jun-yŭ and Chiang T'ien-to. Reportedly President Hsü Shih-ch'ang was the actual leader of this alliance.

The Constitution-Research Association was seriously disappointed by the result of the election of the new Parliament.

Its leaders had strongly urged the establishment of a new Parliament in the hope of enlarging the party's influence, but their plan was thwarted by the persons with whom they had enthusiastically collaborated.

Since the new Parliament was practically the political instrument of the Anhwei military clique, upon the defeat of that group by the joint forces of the Chihli and Manchurian cliques in 1920, President Hsü Shih-ch'ang virtually signed its death warrant by not calling it back from adjournment. At the request of General Ts'ao K'un and thirty other high military and civil officials, President Hsü further issued on October 30 an edict to the effect that another new parliamentary election was to be held in accordance with the electoral laws enacted in 1912. This step was obviously intended to bring about a reconciliation between the North and the South, which had been divided to an extent, at least, over the issue of whether the old or the new Parliament should legislate for China. Since the old Parliament of 1912 had been elected in accordance with the related laws, constitutionally, it had the stronger legal claim. The new Parliament had been elected in 1918 in accordance with a set of new laws, enacted by an organ the legitimacy of which had been highly questionable. But on the other hand, the members of the old Parliament, which had been twice dissolved, and whose terms of office had, in most instances, expired, were also unfit to resume duties in Peking. Under such circumstances, the election of another new Parliament in accordance with the old laws was a reasonable compromise.

But the presidential edict was not favorably received in the whole country. The leaders in Canton still insisted upon the revival of the old Parliament in Peking. The military governors of Chekiang, Fukien, Hupei, and Kiangsi also deemed that the edict might create more problems than it would be able to solve.⁶⁸ In consequence, only eleven provinces and special areas obeyed the order from Peking and held elections. Since there were not enough members to constitute a quorum, the proposed Parliament was never convoked. After the war between the Chihli and the Manchurian military cliques in the spring of 1922, the old Parliament was reconvoked in Peking instead, and President Li Yüan-hung was reinstated.⁶⁹

The revived Parliament, however, did not show itself any more competent than it had previously. Numerous tiny political parties were constantly fighting for partisan gains in the chambers. In doing that they were not reluctant to collaborate

with the warlords. The election of General Ts'ao K'un as President in 1923 clearly indicated that many members of the Parliament had degenerated and become so demoralized that self-enrichment seemed to be their sole goal. The portion of the public which was concerned with politics no longer had any high regard for them. As a matter of fact, their behavior was universally condemned. Indeed, it is not an exaggeration to say that the bad impression which they created in the minds of the Chinese public undoubtedly caused many Chinese to maintain a skeptical attitude toward representative institutions for many years.

Let us pause for a moment to make a cursory survey of the exact political complexion of the old Parliament at this time. After its revival in 1922, its members may be roughly classified into nine factions: (1) the Kuomintang group, consisting of the loyal followers of Sun Yat-sen, led by Hsieh Ch'ih, Chou Chêng-lin, and Hsü Tê-li; (2) the Chêng-hsüeh Hui (the Political Study Society), consisting of the opportunist wing of the ex-Kuomintang, led by Ku Chung-hsiu, Chang Yao-tsêng, Li Kêng-yüan, and T'ang Ch'i; (3) the pro-Tuan Ch'ijui group, consisting of the remnants of the former An-fu Club and several members from Chekiang Province, led by Wu Tsê-shêng and Chu Fu-chêng; (4) the Fêngtien group, consisting of some members from Manchuria, led by Liu En-ko; (5) the I-yu Shê (the Society of Beneficial Friends), consisting of certain ex-Kuomintang and ex-Chin-pu Tang members, led by Wu Ching-lien and Lo Chia-hêng; (6) the New Kung-ho Tang (the New Republican Party), consisting of the remnants of the former Kung-ho Tang (the Republican Party), led by Chang Po-lieh and Lo Chi-han; (7) the Sun Hung-i group, consisting of some ex-Kuomintang members who were closely affiliated with Sun Hung-i, a politician from Hupei Province who once headed the T'ao-yüan clique of the Constitution-Discussion Society in 1917; (8) the Hsien-chêng T'ao-lun Hui (the Constitution Debate Society), led by Chiang T'ien-to and T'an Jui-lin, who organized their party in 1918; and (9) the Constitution-Research Association, led by Wang Chia-hsiang and P'u Tien-chün.⁷⁰

Among these groups, the I-yu Shê, the Chêng-hsüeh Hui, the Constitution-Research Association, and the Hsien-chêng T'ao-lun Hui were comparatively larger in size and more active in parliamentary affairs than the others. It was said at the time that prior to Li Yüan-hung's second expulsion from the presidency the formation of Cabinets was often jointly manipulated by the I-yu Shê and the Chêng-hsüeh Hui

members in the Parliament. However, these two groups were not friends at all at the time, for the I-yu Shê was a protégé of General Ts'ao K'un, whereas the Chêng-hsüeh Hui supported President Li Yüan-hung.

When General Ts'ao K'un was proceeding to get himself elected President, members of the Kuomintang group, the Chêng-hsüeh Hui, the pro-Tuan Ch'i-jui group, the Fêngtien group left Peking and refused to participate in his election. Except a few individual members, all the other groups cast their votes for the general.⁷¹ They also adopted a permanent Constitution for the Republic in October, 1923. But the Parliament itself and the permanent Constitution were simultaneously terminated with the arrest of its patron, President Ts'ao K'un, one year later.

THE PERMANENT CONSTITUTION OF OCTOBER 10, 1923

Since the permanent Constitution of 1923 lasted only about one year and was never completely put into operation, it is unnecessary to consider it in any detail.⁷² A brief statement of its most important features, however, seems desirable. First, like the Provisional Constitution, it vested the sovereignty in the people, and provided a bill of rights of the people, with the provision that the rights could be exercised only in accordance with the law (Arts. 4-21). Second, the legislative powers were to be exercised by a Parliament consisting of two houses with equal authority (Arts. 39-58). Third, the executive power was to be exercised by the President with the assistance of the cabinet ministers; all the mandates and official documents of the President should be countersigned by a cabinet minister in order to be valid; and the cabinet members were responsible to the House of Representatives (Arts. 71-95). Fourth, the appointment of the Premier by the President had to have the concurrence of the House of Representatives, and the cabinet ministers were to be removed by the President when a vote of lack of confidence had been passed by the same house, or the same house should be dissolved with the concurrence of the Senate (Arts. 89-94). Finally, the constitution had many provisions distributing powers between the central and provincial governments (Arts. 22-38 and 124-135). It was unlike either the Constitution of Canada, where residual powers, being unmentioned, belong to the central government, or that of the United States, where the residual powers are definitely reserved to the several states. The Chinese Constitution stipulated that when any matter arose not specified in the Constitution, it should

belong to the Republic if by its nature it concerned the Republic, and to a province if by its nature it concerned the province. Any controversy arising in this connection was to be decided by the Supreme Court (Art. 26). The Supreme Court, moreover, was given the right to decide whether a provincial law should be void whenever doubt arose as to conflict with a national law (Art. 28). Finally, the constitution empowered the Constitutional Convention, composed of the members of the Parliament, to interpret the provisions of the constitution itself (Art. 139).

THE MOVEMENT FOR PROVINCIAL SELF-GOVERNMENT

A survey of the central government of China during the period would not be complete without mention of the movement for provincial self-government. Historically, China in her imperial days had always been a unitary state. For about two thousand years, it was a commonly recognized system; no alternative was ever proposed, still less tried. True, the empire had recurrently disintegrated, but that was an abnormal situation. Normally the emperor reigned supreme throughout the realm, without being checked by any legal device of decentralization. It was he who appointed and dismissed important local officials. He might, either directly or through the hierarchy of the imperial administration, change, suspend, or annul the decisions and orders of any local authority at will, and no local area had any inherent powers and rights which the throne could not take away.

But, with the introduction of Western political ideas into China, the relative merits of a unitary and a federal state also began to be discussed by the Chinese. Both the Republican and Monarchical Constitutionals had, prior to the Revolution in 1911, given thought to the idea that a vast country like China might be better governed if a federal system was adopted.⁷³ After the outbreak of the Revolution, the Provincial Assembly of Shantung promptly made known its preference for federation. The telegram proposing the establishment of the Provisional Government of the Republic, sent by the Military Governors of Kiangsu and Chekiang to the Military Governor of Shanghai on November 11, 1911, also stated that the system of the United States of America should be the model in framing China's future political machinery. They suggested that the Provisional Government of the Republic should be elected by representatives of the various provinces, with each province having equal representation. The formation of the Provisional Government exactly followed this policy.

This indicates that federalism was a dominant idea at the formative period of the Republic.

After Yüan Shih-k'ai became President, the common desire for the restoration of order in the country generated a clamor for centralization, which, for a while, superseded the thought of federalism. But at the zenith of Yüan's autocratic reign in 1914-15, some scholars again preached federalism, in the hope that such a system might serve as a check to the despotism of Yüan. The Kuomintang members of Parliament in 1916-17 also endeavored to stipulate a provincial self-government system in the nation's permanent constitution in order to check Tuan Ch'i-jui, whom, they thought, would remain in control of the central government after completion of the document. The determined opposition of the Chin-pu Tang members of Parliament to this plan showed that at this time federalism was no longer regarded as a possible solution to China's political and administrative problems, but merely as a partisan expediency.

In the years between 1918 and 1922 the movement for provincial self-government once more gained some ground. The civil wars not only between the Northern and the Southern regimes but among the military factions almost everywhere were creating a general pessimism toward national reconstruction. Eminent persons who previously had strongly rejected federalism now began to lend their active support for its realization in China.⁷⁴ Having been convinced that the country as a whole could not be pacified at once, they wished to concentrate their efforts for the time being on their own provinces. Political scientists also published articles, expounding the real meaning of federalism and pointing out that federalism does not necessarily lead to disorder, and that it seemed to be the best way to bring about national unity under the existing circumstances.⁷⁵

On July 22, 1920, a military leader in Hunan Province first announced his intention to help his province establish a self-government. Although this military leader was shortly forced to give up his control of the province, his successor went on to have a provincial constitution drafted in August, 1921. This apparently democratic constitution was voted on by the people of Hunan three months later and was promulgated on January 1, 1922. But during the three years when this document was supposedly in force, the Hunan people did not have a genuine self-government. The movement for a provincial self-government was actually utilized by the military governor to assure himself of a semi-independent position, free from the inter-

ference of the central government. The Province of Chekiang also promulgated a constitution of a similar nature on September 9, 1921. But its governor, who previously had been instrumental in having the document prepared, failed to enforce it. Subsequently, the provincial council of Chekiang tried again to adopt a constitution aimed at self-government, but their effort was once more thwarted by the military governor, who did not wish to relinquish any part of his personal control, but who had hitherto shown no hesitation in utilizing the movement for provincial self-government as a weapon to ward off any encroachment on his authority by other militarists outside Chekiang.

A number of other provinces such as Shensi, Kiangsi, Kwangtung, Kwangsi, Yunnan, Szechuan, Hupei, Fukien, and Kweichow also drafted constitutions or announced their intention to have a self-government, but self-government did not come to any of these provinces. The reason was that the militarists of the provinces, who advocated or accepted federalism for their provinces, were more interested in their own personal power than in real provincial autonomy.

In the midst of this movement, a gathering of eight civic groups in Shanghai in 1922, styling itself the Conference on the State of the Nation, even went so far as to draft a federal constitution and urged both the central and provincial governments to accept federalism.

The so-called Ts'ao K'un Constitution of 1923 was, as we have seen, federalist in nature. But by that time the movement for provincial self-government or federalism had completely lost its appeal. No intelligent man still believed that federalism could be a protection against the despotism of the central government or the civil wars among the warlords. Most people had come to realize that something else was needed to do away with both. Federalism or provincial self-government might be a good thing for China, but it would not yield the desired result until personal autocracy and militarism were first eliminated. Otherwise, it would only provide the militarists with a constitutional garment under which to keep their hold on the various provinces. It was natural that the Manifesto of the reformed Kuomintang of 1924 bitterly denounced federalism.⁷⁶ Thereafter, it was not advocated for a long time.

In recapitulation, from Yüan Shih-k'ai's death in 1916 to the arrest of President Ts'ao K'un in 1924, militarism, lawlessness, disunity, and disorder prevailed in China. The presidents, the cabinet, and the legislatures were tools of

whatever militarist happened to be in power and were the agencies by which the overlords controlled the revenue surplus and foreign relations. When an overlord militarist was defeated, a change in the Peking administration had to follow. The Provisional Constitution and later the so-called Ts'ao K'un Constitution of 1923 had only a nominal existence and were merely used by the militarists as legal screens behind which they advanced their own fortunes. The political parties and the parliamentarians during this period also became increasingly demoralized. Most of them showed no reluctance to sacrifice their political principles for immediate self-interest. Ambitious militarists and shameless politicians frequently collaborated. The struggle between republicanism and the traditional autocratic despotism, which had characterized the Chinese Government in the first few years of the Republic, was replaced by the frequent shifts in collaboration. During these years the authority of the Peking government scarcely extended beyond the walls of the Capital. The real power rested with either the military governors or the super-military governors in the various provinces.⁷⁷

Government in Peking from the Arrest of President Ts'ao K'un to the Conclusion of the Kuomintang's Northern Expedition

As has already been said, from the arrest of President Ts'ao K'un in the winter of 1924 to the conclusion of the Kuomintang's Northern Expedition in the summer of 1928, the government in Peking was no longer even formally legitimate; political necessity had caused it to cast off all pretense of legitimacy and to reveal its true nature. This applies both to the inauguration of General Tuan Ch'i-jui as the "Provisional Chief Executive" in November, 1924, and to the establishment of Generalissimo Chang Tso-lin's "Military Government" in June, 1926.

THE GOVERNMENT OF THE PROVISIONAL CHIEF EXECUTIVE

The Establishment of the Government of the Provisional Chief Executive

When General Fêng Yü-hsiang arrested President Ts'ao K'un after a surprise return from the front and temporarily assumed control of the Central Government,¹ he did not personally take over the administration. Instead, General Huang Fu was appointed Acting Premier of a Regency Cabinet in the name of President Ts'ao K'un on October 31, 1924. Two days later, President Ts'ao announced his resignation. Gen-Huang's Regency Cabinet functioned about twenty days; and on November 24 the Government of the Provisional Chief Executive under General Tuan Ch'i-jui was formed.

Prior to this, the problem of what kind of institution should be used to replace the government under the Constitution of 1923 appeared not to have been solved. The various factions, such as those of General Chang Tso-lin of Manchuria and

Fêng Yü-hsiang of the Kuo-min Chün clique,² whose alliance was instrumental in bringing about the downfall of the Chihli military clique and of President Ts'ao K'un, had had different views on this matter. The followers of Sun Yat-sen in the North had first expressed a preference for a central government in the form of a commissariat, with the leaders of the various factions constituting its core. General Fêng Yü-hsiang, who at that time was closely connected with Sun's followers, was, for a while, in favor of this idea. But the military and political lieutenants of Tuan Ch'i-jui were reported to have opposed such a system in the hope that their leader might have a chance to resume control of the government. General Chang Tso-lin, although he had made no public comment on the proposal, apparently tended to be of the opinion that, since Tuan was without substantial military following of his own, it would not be difficult for him to make use of Tuan if the latter were put in charge of the government.

While the form of government was still under discussion, the military governors and other high commanders of the army and navy in the Yangtze Valley, who had long been connected with the Chihli military clique, wired Peking that unless Tuan Ch'i-jui were made the head of the new government they would not recognize the authority of Peking.³ In order to pacify this group, Generals Chang Tso-lin and Fêng Yü-hsiang, whose forces then controlled northern China, invited Tuan Ch'i-jui to Peking on November 22. The latter immediately assumed the title of "Provisional Chief Executive" and in that capacity promulgated on November 24 the "Articles on the Organization of the Government of the Provisional Chief Executive." Thus all the constitutional lineage and structures of the past were swept away, and a new system of government was installed.

The Organization of the Government of the Provisional Chief Executive

According to the Articles on the Organization of the Government of the Provisional Chief Executive,⁴ which consisted of only six sections, the Provisional Chief Executive actually combined the functions of the head of the state and the head of the administration. Internationally, he was to represent the Republic of China, and had, therefore, complete control over her foreign relations. Nationally, he was to hold the supreme authority over civil affairs and was to be the Commander-in-Chief of the Army and Navy. He was not to be checked by any legislative body. Nor would anyone have the

legal power to censure his acts. However, his acts would be valid only when they had been countersigned by the ministers of state, who were nine in number. In deciding national policies, he could call a meeting of the Council of State, composed of the ministers. From the last two provisions, it might be thought that the Provisional Chief Executive would not constitutionally have a free hand in the conduct of state affairs, since the concurrence of the ministers of state was required through the devices of countersignature and the convocation of the Council of State. But under a closer examination, it becomes clear that he would virtually be a dictator. He was assured that the ministers would not fail to concur with him on matters which he might insist upon, since he had the power to appoint and dismiss them. This fact was not materially modified by the establishment of a cabinet in December, 1925,⁵ with a Premier supposedly assuming the highest responsibility of the practical control of government.

In order to assist the Provisional Chief Executive, the Provisional Political Council was formed in the summer of 1925.⁶ It was composed of representatives largely appointed by the military and civil authorities of the provinces and other special areas, the high militarists, the occupational associations, and the Provisional Chief Executive.⁷ Its functions included the power to discuss and pass on matters of importance and the power to make recommendations to the government. Specifically, the following matters were to be discussed and passed on by the Council before execution: (1) regulations on provincial self-government; (2) execution of the resolutions of the various reconstruction conferences; (3) prevention and mediation of disputes between and within the provinces; (4) declaration of war, making of peace, and conclusion of treaties with foreign powers; (5) flotation of domestic and foreign loans, and increase of taxation, and (6) other matters that the Provisional Chief Executive might think fit to submit to it for deliberation. Matters which had passed the Council were to be enforced by the various departments under the direction of the Provisional Chief Executive. But if the Provisional Chief Executive should disapprove a measure duly passed in the Council, he might, within twenty days after he received it, return it to the Council for reconsideration. If the measure should again be passed by a two-thirds vote of a quorum of three-fourths of the actual membership of the Council, the Provisional Chief Executive then was obliged to execute it.⁸

Matters on which the Council could make recommendations,

however, were confined to the first three items above mentioned. Moreover, a recommendation could be proposed only by a joint motion of at least ten members, and the government could accept or reject such a recommendation at its discretion.

During its short existence, the Council failed to serve any useful purpose. This can, of course, be explained mainly by the fact that at the time the actual power of government was in the hands of the militarists. But it was also due to the undemocratic nature of its membership and the limited scope of its powers.

The External Relationships of
the Government of the Provisional Chief Executive

Legally the Provisional Chief Executive looked, indeed, like a powerful dictator. But practically Tuan Ch'i-jui, the incumbent, was only the nominal head of the government. In Peking, his position was very similar to that of President Hsü Shih-ch'ang in the years of 1920-22. He held the reins of government with the backing of two rival factions of real strength, namely the Manchurian clique and the Kuo-min Chün. He had to hold together and balance them well. In the country as a whole, he found that the militarists in the various provinces were virtually independent and were in an almost constant state of military strife. Furthermore, the reformed Kuomintang with the assistance of the Soviet emissaries was meanwhile speedily consolidating its foundation in Canton and making increasing headway in intellectual and working-class circles all over the country. These factors give greater importance to a survey of the relationships between the Government of the Provisional Chief Executive and these groups than to a mere description of its institutional setup. Only in this way can the position and nature of the central government in China during this period be understood.

Let us begin with the relationships of the government with the Kuomintang. When President Ts'ao K'un was placed under arrest after the defeat of the Chihli military clique in October, 1924, the new masters of Peking were reported to have had no serious intention of coöperating with the Kuomintang in the establishment of a new central government. They underestimated its influence and disliked its radicalism. But when General Fêng Yü-hsiang, who alone at the time seemed to discern the coming political current, invited Sun Yat-sen by telegram to come to the North and confer with the northern military leaders on the state of the nation, Generals Chang

Tso-lin and Tuan Ch'i-jui found that it would be obviously unwise if they continued to ignore their former ally, and, therefore, they extended their own invitation to Sun. Sun, upon accepting the invitation, left Canton for Peking on November 13. He issued a statement prior to his departure declaring that the liquidation of warlords and the abolition of the unequal treaties with foreign powers were the objectives of the Kuomintang, that a People's Convention should be convoked to discuss the state of the nation, and that a preparatory conference should be held in advance.

Sun's views were immediately echoed by General Tuan Ch'i-jui, who upon assuming the control of the government in Peking on November 21, told the nation that within one month he would convoke a "Reconstruction Conference," and within three months he would convoke a "Convention of People's Representatives." But subsequent events proved that General Tuan was not sincere in his apparent concurrence with Sun's ideas, and that the possibility of coöperation between them was only an illusion. Concretely, General Tuan's promise immediately after his inauguration to uphold the unequal treaties in exchange for the recognition of his regime by the foreign powers was his first move against the avowed wishes of Sun Yat-sen.⁹ The issue over the composition of the "Reconstruction Conference" finally led to the complete breakdown of all negotiations between the Provisional Chief Executive and the Kuomintang.¹⁰

Since the Kuomintang refused to cooperate with the Government of the Provincial Chief Executive, the fate of the latter depended, therefore, completely on the militarists. But it was a difficult matter to do the bidding of the latter. The militarists were divided and had conflicting interests. If the Provisional Chief Executive pleased one of them, he certainly would not satisfy the others. The militarists in the Yangtze Valley were apparently not to be counted upon for support, since their demand for the instatement of Tuan Ch'i-jui was only a temporary expedient. They actually were in an independent position and, therefore, had given up all pretence of being anyone's subordinate or ally, except as it suited their purposes.

Thus, Tuan Ch'i-jui had to rely upon the backing of the Manchurian clique and the Kuo-min Chün in operating the government. From the outset, Fêng Yü-hsiang, who had seized the seat of authority and had set up a regime of his own, represented the intrusion of the An-fu and Manchurian elements. Chang Tso-lin, whose armies had done all the fighting against

Wu P'ei-fu, disliked Fêng Yü-hsiang's participation in affairs of state, looking upon him as an upstart who would have to be put in his place.¹¹ From the standpoint of Tuan Ch'i-jui, the two rival factions theoretically were to be kept together and to be treated equally well. Practically, it appeared that Tuan tended to emphasize the value of the support of the Manchurian clique and accordingly took more orders from that overlord. It was obvious to the most casual observer that the government of the Provisional Chief Executive was in constant danger of incurring the hatred of Fêng Yü-hsiang.

Matters eventually came to a head in October, 1925, when General Sun Ch'uan-fang, a former subordinate of Wu P'ei-fu, who had established himself in Chekiang during the war of 1924, attacked the Manchurian forces in Kiangsu, drove them out of Shanghai and Nanking, and advanced to the Shantung border. To General Fêng Yü-hsiang, this offered, of course, an excellent opportunity of redressing his grievances, and he, therefore, took steps aimed at driving the Manchurian forces entirely out of Chihli. Through the mediation of the Provisional Chief Executive, the Manchurian leaders agreed to withdraw from certain localities in Chihli, and permit their occupation by the Kuo-min Chün. But General Kuo Sung-ling, one of General Chang Tso-lin's trusted lieutenants, with the flower of the Manchurian army, whose headquarters were at Luan-chou, in Chihli, soon after revolted against his chief and advanced on Mukden. With the fate of Mukden itself in the balance, General Fêng Yü-hsiang deemed that such a good chance should not be lost and launched a heavy attack upon the Manchurian troops in Tientsin. General Kuo Sung-ling was quickly defeated, captured, and shot on December 23. Meanwhile General Fêng Yü-hsiang's forces captured the city of Tientsin on the following day, and General Li Ching-lin, Mukden's nominee as the Military Governor of Chihli, withdrew the bulk of his troops to Shantung, where he joined forces with General Chang Tsung-ch'ang, another Manchurian militarist.

With this setback to the Manchurian clique, the Provisional Chief Executive sought, as has been mentioned, to placate the winning faction by reorganizing his government so as to place persons agreeable to Fêng in high positions. But at the same time the Manchurian generals in Shantung were preparing plans for the recapture of Tientsin, and after a brief delay caused by the necessity for military reorganization, a Manchurian Army commanded by General Chang Tso-lin's eldest son came to their aid by invading Chihli from the North. There was considerable fighting at Shan-hai Kuan and

Luan-chou and also to the South of Tientsin, which was eventually evacuated by the Kuo-min Chün toward the end of March, 1926. It should be noted that when the Manchurian forces announced their intention of attacking the Kuo-min Chün and recovering Tientsin, General Wu P'ei-fu, who had remained in retirement at Yüeh-chou, proceeded to Wuchang and announced his intention of coöperating with his former foe, General Chang Tso-lin, in the fight against Fêng Yü-hsiang, whom he had hated ever since the latter's defection in 1924.

Realizing that he could not make an effective resistance, General Fêng Yü-hsiang immediately set about his preparations for leaving the country, withdrew his armies to Peking, turned his authority over to his lieutenants, and permitted Lu Chung-lin, his senior general, to take over the supreme command in the field around the capital. While there was little coördination among the allies, the Kuo-min Chün was, however, forced to further evacuate the bulk of its forces and equipment toward Nan-k'ou and Kalgan late in March. By this time the Provisional Chief Executive was making an effort to gain favor with General Chang Tso-lin by carrying on an intrigue with General T'ang Chih-tao against the Kuo-min Chün behind the latter's lines. In order to suppress the intrigue, General Lu Chung-lin was prompted on April 10 to attempt the arrest of Tuan Ch'i-jui and the disarmament of his bodyguard. But shortly thereafter the Kuo-min Chün retreated to Nan-k'ou from Peking, and Tuan Ch'i-jui returned from the Legation Quarter where he had taken refuge to the chair of the Provisional Chief Executive, apparently wishing to remain in the post in spite of the fact that the masters of the situation had been changed. Within a few days, however, he learned that the Manchurian clique no longer wanted to keep him in power, and he fled therefore to Tientsin. Before his departure, he tendered his resignation from the government on April 20.

THE MILITARY GOVERNMENT OF GENERALISSIMO CHANG TSO-LIN

The Establishment of the Military Government of Generalissimo Chang Tso-lin

For several weeks after the departure of Tuan Ch'i-jui in April, 1926, Peking was actually without a government. Only a Committee of Public Safety was functioning in the capital and endeavoring to preserve order. Sharp differences of opinion immediately developed between Generals Chang Tso-

lin and Wu P'ei-fu over the procedure to be followed in re-constituting the central government. Wu insisted that Dr. W. W. Yen, Premier under former President Ts'ao K'un in 1924, should resume the premiership; Chang maintained that the new government ought to be constituted in accordance with the "wishes of the people." Dr. Yen was eventually prevailed upon to assume office as Premier in the middle of June, but resigned on June 22, after which a Regency Cabinet was formed with Admiral Tu Hsi-kuei as Acting Premier.¹²

The control of the Regency Cabinet soon showed signs of disintegration, and even the Acting Premier himself was denounced by General Chang Tsung-ch'ang, one of the senior generals under Chang tso-lin. On October 2, Admiral Tu Hsi-kuei's resignation was accepted by the overlord militarists, and Dr. Wellington Koo thereupon assumed office as Acting Premier and Minister for Foreign Affairs.

Early in November General Chang Tso-lin arrived in Tientsin from Mukden, and it was generally believed that he would proceed straight to Peking and assume office as President. It was not, however, until the end of the year that he actually entered the capital. After conferences with various military leaders, in the meantime, and ostensibly at their request, he assumed office on December 2 as Commander-in-Chief of the An-kuo Chün (Tranquility Restoration Army), in an effort to coördinate the various forces against the steady northward advance of the Kuomintang Army.¹³ As for political affairs, he declared that General Wu P'ei-fu should be given the complete power of supervising the reorganization of Dr. Koo's Regency Cabinet, and that he himself would not interfere with the events in Peking. As a result, the Regency Cabinet was reconstituted in January, 1927.

While the reorganized Regency Cabinet was functioning in Peking, the expeditionary forces of the Kuomintang advanced rapidly toward the North, and in May the Manchurian armies were forced to retreat from Honan and Shantung to Chihli. To cope with the emergent situation, on June 17 Chang Tso-lin took the long-expected step of proclaiming himself dictator, with the title of Generalissimo (Ta-yüan Shuai). He organized the Military Government ceremoniously the next day, and the Regency Cabinet thereupon resigned.

For almost a year, the Regency Cabinets had had no more substance than a ruler in a motion picture. The Minister of Finance had no money except the small sums collected by foreigners and turned over to the central government after the interest and sinking fund requirements of foreign debts

had been met. The Minister of Communications controlled no railways because the warlords had taken over locomotives, rolling stock, and tracks. The Minister of Education controlled government schools, but they were closed because the teachers had been paid no salaries for many months, and the schools had neither light nor water because of unpaid bills. The Minister of Interior could not name a single subordinate without first consulting the wishes of the warlord who happened to control the district in which the subordinate would act. The Minister of Foreign Affairs found that provincial officials dealing with local consuls-general settled all disputes with foreign governments. As for the Ministry of Army, the incumbents were invariably the personal agents of the most powerful militarists. In consequence, the ministry took orders rather than gave instructions to the various units. As a whole, the Regency Cabinets throughout this period were in a miserable condition, determining no policy but only receiving directions from numerous military giants. The establishment of the Military Government of Generalissimo Chang Tso-lin was, indeed, a step toward responsible centralization if nothing else.

The Organization of the Military Government of Generalissimo Chang Tso-lin

Upon his assumption of office as Generalissimo of the Chinese Republic, Chang Tso-lin issued a Mandate on the Organization of the Military Government, according to which the Generalissimo should control the naval and military forces of the Republic. The authority of the Republic would be vested in him, and he would be responsible for safeguarding the legal rights of the citizens.¹⁴ A Cabinet was to be attached to the Military Government to assist the Generalissimo in political matters.

The Cabinet was composed of a Premier, a Minister of Foreign Affairs, a Minister of Military Affairs,¹⁵ a Minister of Finance, a Minister of Interior, a Minister of Justice, a Minister of Education, a Minister of Industry,¹⁶ a Minister of Agriculture and Labor, and a Minister of Communications. Mandates issued by the Generalissimo were to be countersigned by the Premier, except that those concerning individual ministries should be countersigned by the ministers concerned. Mandates in connection with the appointment or dismissal of Cabinet ministers should be countersigned by the Premier.

The following matters were to be discussed in the meetings

of the Cabinet:¹⁷ (1) treaties with foreign powers, (2) budgets, (3) emergency appropriations, (4) mandates, (5) military system, (6) declaration of war and making of peace, (7) appointments of officials of the "selected rank," (8) disputes between the various departments, (9) matters which were required by laws and mandates to be discussed in Cabinet meetings, and (10) matters which the Premier and the ministers might deem desirable to submit to the meetings before execution. The Premier was to preside over the meetings.

From the above one may also be misled into thinking that the Generalissimo could be but a nominal head of the Government since important matters had to be discussed in Cabinet meetings and his mandates were to be countersigned by either the Premier or the ministers concerned in order to be effective. But the real situation was quite different. In the first place, members of the Cabinet, including the Premier, were exclusively his own appointees. He could dismiss them at pleasure, and he was the only one to whom they were responsible. Thus it was highly unlikely that members of the Cabinet would ever act against the wishes of the Generalissimo. In the second place, Generalissimo Chang Tso-lin was all-powerful in Peking at the time, having no rival of real strength. No one was actually in a position to challenge him on matters of any sort. Being a member of the Cabinet, one was bound not only passively to avoid the provocation of the Generalissimo's displeasure, but also actively to strengthen one's ties with him. Indeed, members of the Cabinet at the time never attempted to be policymakers. They were in no way different from other high staff officers in the headquarters of General Chang Tso-lin. He was really a dictator. It is, however, to be remembered that the actual authority of the Military Government of Generalissimo Chang Tso-lin extended over little territory beyond the three Manchurian provinces and Chihli; the greater part of China had fallen into the hand of the Kuomintang. When the latter's Northern Expeditionary Forces reached the vicinity of Peking in the summer of 1928, Generalissimo Chang Tso-lin was soon compelled to retreat to Mukden and was assassinated on the South Manchurian Railway by the Japanese on June 4.¹⁸ This ended the so-called "Peking government."

Conclusion

It will be seen from the foregoing that although despotic or paternal autocracy was quickly replaced by a republican form of government with the outbreak of the Revolution in 1911, China did not obtain a stable and genuinely democratic government during the next two decades. The central government of China in the years 1911-28 well demonstrated that a democratic government cannot be achieved merely by setting up a democratic constitution or law, much less a maladjusted one. Something more than that is needed.

Shortly after the outbreak of the Wuchang Revolution, the Provisional Government of the Republic was set up in Nanking by the revolutionaries. The government was presidential in form with Sun Yat-sen as its head. A National Council composed of representatives of the various provinces served as legislature. The foundation of the government was more or less based upon the military governments of the various provinces which had repudiated the Manchu authority at the time, instead of directly upon the people. Since it was provisional in nature, its organization and authority were formulated with scant attention to detail and were exercised only nominally.

Meanwhile, the Imperial Court of the Manchus was still functioning in Peking with Yüan Shih-k'ai as Premier. Since neither the Nanking government nor the Peking regime could eliminate the other by force, a compromise was made. Thus, upon the abdication of the Manchu Dynasty, Sun Yat-sen resigned from the presidency in favor of Yüan Shih-k'ai, who had given his unconditional promise of support to the Republic.

On March 10, 1912, the same day that Yüan was inaugurated in Peking, the National Council adopted the Provisional Constitution. The Provisional Constitution provided for a ministerial responsibility system and vested the governing powers in the legislature to an undue extent at the expense of the executive branch of government, especially the President. In framing the Provisional Constitution, the National Council,

controlled by the revolutionaries, hoped that after conferring on Yüan the dignity of the presidency, they would still maintain their position of power.

But since Yüan was a man of ambition and influence, he was naturally unwilling to remain a mere figurehead. As a result of his many attempts to dominate the government, disputes between the President and the legislature were frequent. After the resignation of Premier T'ang Shao-i in June, 1912, Yüan and his following—the ex-imperial officialdom—gained complete control over the administration, whereas the revolutionaries still dominated the National Council and subsequently the Parliament. Friction continued between the executive and the legislative branches of government, but neither branch had the legal means of abolishing the other to remove the deadlock.

Eventually, when the President was strengthened both financially and militarily, he moved to strike. In November, 1913, he ordered the dissolution of the Parliament and also of the Kuomintang. By this time Yüan had already become a dictator *de facto*, but he knew the value of clothing his absolute power in a constitutional garb. He therefore convened the Constitutional Compact Conference, composed of his appointees, for the amendment and revision of the Provisional Constitution. Shortly thereafter, the Conference enacted the Constitutional Compact which was promulgated by Yüan on May 1, 1914.

The outstanding changes incorporated into the Compact were that it unfettered the restrictions on the executive and cut down the power of the legislature. It made the President practically the government itself. All other officials in the government were to be executors of his policies. The proposed Legislative Assembly was never organized, and its functions were nominally performed by the Council of State, which acted only as a rubberstamp seconding Yüan's wishes.

But Yüan was still not satisfied with his political gains. His ambition was rather to perpetuate his personal authority, first by extending his term of office and later by inspiring the monarchical movement.

The movement ended with Yüan's death in June, 1916. But after that time militarism, lawlessness, disunity and disorder prevailed in China. The presidents, the cabinets, and the legislatures were tools of the militarists currently in power and were the agencies through which the warlords controlled the revenue surplus and the foreign relations. The defeat of an overlord militarist was always followed by a change in

the Peking administration. The Provisional Constitution, which was revived upon the death of Yüan Shih-k'ai, and the so-called Ts'ao K'un Constitution of 1923 had only a nominal existence and were used merely by the militarists as legal garbs under which they advanced their own fortunes. The political parties and the parliamentarians during these years showed no reluctance at sacrificing their political principles for immediate self-interest. Ambitious militarists and shameless politicians frequently collaborated. During these years, the authority of the Peking Government was practically confined to the capital. The real power rested with the military governors or the supermilitary governors in the various provinces.

The inauguration of General Tuan Ch'i-jui as the Provisional Chief Executive in November, 1924, and the establishment of Generalissimo Chang Tso-lin's Military Government in June, 1926, cast off all pretence of legitimacy and were frankly admitted to be the result of political necessity. The effort to introduce a constitutional, democratic government in China actually had failed by this time. But it was not until the conclusion of the Kuomintang's Northern Expedition in the summer of 1928 that a chapter in the lengthy history of the constitutional development of the Chinese state was completely ended.

At the outset, however, it should be noted that among the obstacles preventing China from attaining constitutional democracy was not the lack of democratic spirit and thought on the part of the Chinese people. As a matter of fact, popular sovereignty and individual liberty have always been traditional in China despite the fact that the country was governed autocratically for thousands of years. As observed by the distinguished scholar, Liang Ch'i-ch'ao:¹

Except the Emperor alone, everyone in the state is equal in the sight of the law, with equal personal and public rights. Even the authority of the Emperor is not a right divine, but is conditioned upon the wish and consent of the people. The theories, advanced by our forefathers of 2,000 years ago, have sunk deep into the hearts of the people, and are accepted as being as unalterable as the laws of nature.

What really prevented China from building up a democratic government was the fact that the Chinese people never had any actual experience in controlling government, nor had they even tried to study the methods of achieving that result. This

also was pointed out many years ago by the Chinese scholar just referred to. He said:²

Lincoln's definition of democratic government, "of the people, by the people, and for the people" is in part within the thinking of Chinese philosophers. "Of the people, and for the people," are essential to their thought. But "by the people," is a thought left untouched. That is, they believed throughout in the principles that the country is the common possession of the people, and that politics exist solely for the sake of their common advantage. But they neither studied the method nor even seem to have accepted the theory that government must be "by the people." And therein lies the fundamental weakness of China's political thinking. There is no point in speaking of the people as the foundation of the country, and then denying them all powers of participation in politics.

Since the Chinese people never studied democratic governmental processes, the necessary and adequate foundations for establishing and maintaining such a government was lacking. As a result, although many attempts were made to transplant in China many forms of Western political institutions, time after time all that flourished was the terminology.

One of the fundamental requisites of a successful constitutional democracy which had not been provided in China was the educational background of the people. It is possible for other forms of government to exist with an illiterate population. But illiteracy goes ill with democracy. Every student of political science who is familiar with the constitutional history of England can recall that in 1868, when Britain was taking one of its first long steps toward universal suffrage, Robert Lowe, who had been a most powerful opponent of that step, said in Parliament, "educate your masters." Two years later the first English law establishing public elementary schools was enacted. Lord Bryce, in speaking of modern democracy, also emphasized the importance of an educational background for the people. He said: "Modern democratic theory rests on two doctrines as its sustaining pillars; that the gift of the suffrage creates the will to use it, and that the gift of knowledge creates the capacity to use the suffrage aright."³

As China had a literacy rate of only about twenty percent or less, the general mass of the people had no adequate conception and understanding of the theory and practice of constitutional government.⁴

Another fundamental requisite of a successful constitutional democracy which China never had is political experience on the part of the people. Though an educational background for the citizens is indispensable to a democratic government, practical experience in politics is even more needful. Attainments in learning and science usually do little to make men wise in politics if the men never have an opportunity to practice politics. Thus, the habit of local self-government is the best training for democratic government in a large nation, since it can offer the best and fullest chance to the people to make themselves competent citizens. As Lord Bryce once said:⁵

It creates among the citizens a sense of their common interests in common affairs, and of their individual as well as common duty to take care that those affairs are sufficiently and honestly administered. . . . Meanwhile it is enough to observe that the countries in which democratic government has most attracted the interest of the people and drawn talent from their ranks have been Switzerland and the United States, especially those northern and western States in which rural local government has been most developed. These examples justify the maxim that the best school of democracy, and the best guarantee for its success, is the practice of local self-government.

Laski also put stress upon the relation between local self-government and the success of democratic government. He said in part: "Local government, in other words, is educative in perhaps a higher degree, at least contingently, than any other part of government. And it must be remembered that there is no other way of bringing the mass of citizens into intimate contact with the persons responsible for decisions."⁶ In speaking of the essence of democracy in America, de Tocqueville expressed the same opinion: "Town-meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty."⁷

From the above, it is clear that the foundation of a democratic government is in the people's political experience obtained from the practice of local self-government. As for China, while the people had some experience in operating village social affairs, they had not been accorded the privilege of participation in local government. Accordingly, much

useful knowledge of the conduct of democratic government was lacking. Without the necessary habits or experience, they could not be expected to handle a democratic government in so vast a country with so huge a population.

Another requisite of a successful constitutional democracy which was not adequately provided in China is the existence of a genuine and powerful public opinion. Says Arnold Bennet Hall in his book, entitled Popular Government:⁸

Popular government is a practical rather than a philosophical concept. Its existence is not determined by the application of political dogmas, the constitutional organization and distribution of its powers, or the qualifications of its voters. Its existence depends ultimately upon considerations that are more permanent, organic and psychological. In the last analysis and for all purposes, popular government is that form of political organization in which public opinion is the prime requisite of popular government.

That is to say, public opinion is the substance of democracy. Therefore, where the machinery of democracy has been installed among peoples or over areas where there was no genuine and powerful public opinion there have followed dictatorships, oligarchies, and despotisms under the name of democracy. None of the devices of popular control can secure democracy unless back of this machinery there is a public opinion that functions through it. However, where there is a powerful and virile public opinion, there will be some degree of popular government, even though democratic institutions have not been adequately provided. What we mean by a genuine and powerful public opinion has been most ably analyzed by Lowell. He said in part:⁹

Public opinion to be worthy of the name, to be the proper motive force in a democracy, must be really public; and popular government is based upon the assumption of a public opinion of that kind. In order that it may be public a majority is not enough, and unanimity is not required, but the opinion must be such that while the minority may not share it, they feel bound, by conviction not by fear, to accept it; and if democracy is complete the submission of the minority must be given ungrudgingly.

The fact was that the Chinese people had not yet developed public opinion so as to inculcate in the minds of the people a common conviction about the basic purposes of government and the fundamental means for their accomplishment. Con-

sequently, while there were many occasions when some kind of constitution or government had been established by one or more Chinese political groups, those who disagreed with it usually did not recognize any necessity to coöperate or even to acquiesce. Those who at first helped to establish certain kinds of constitutions or governments not infrequently later helped to destroy them or watched someone else destroy them. The history of China during the early period of the Republic gives sufficient evidence of these attitudes.

Another fundamental requisite of a successful constitutional democracy which did not exist in China is the presence of two major antagonistic political parties divided, as Dicey put it, upon real differences, which are important, but not fundamental.¹⁰ It is generally admitted that in modern democratic countries parties are inevitable. As a matter of fact, no free large country has been without them. Lord Bryce further indicated that no one has shown how representative government could be worked without parties.¹¹ But if the existence of a democratic government normally involves the existence of parties, it also requires as a condition of success that there should be only two major parties and that they must not be "irreconcilable." The necessity for having only two major parties has been illustrated by the ills that have developed from the presence of several political groups, either in parliamentary or in presidential governments. As to the requirement that two major parties must be divided upon real differences, Lowell offered the following arguments:¹²

In order that the welfare of parties may be not only safe, but healthy, it must be based upon a real difference of opinion about the needs of the community as a whole. In so far as it is waged, not for public objects, but for private gain, whether of individuals, or of classes, or of collective interests, rich or poor, to that extent parties will degenerate into a scramble of self-seekers.

As to the theory that two major parties must not be divided upon fundamental issues, Arnold Bennett Hall made some excellent comments. He said in part:¹³

If a democracy is to succeed, it would seem essential that the people should hold certain fundamental convictions in common, such as a profound belief in and devotion to the principle of liberty through law, and its coordinate concepts of toleration and self-restraint. They should have a common and firm belief in lawful evolution and against revolution as an efficient means of progress.

If political parties are divided upon fundamental issues, mutual forbearance between them is, therefore, impossible. The party in power will not allow an opposition to exist and an opposition will eventually be forced to resort to violence instead of persuasion in order to attain power. If this is the situation, there can be no democracy. In speaking of the mutual forbearance between political parties in England, W. Ivor Jennings made the following statement:¹⁴

In fact, opposition and government are carried on alike by agreement. The minority agrees that the majority must govern, and the majority agrees that the minority should criticize. The process of Parliamentary government would break down if there were not mutual forbearance. The most important elements in Parliamentary procedure are the discussions "behind the Speaker's Chair" or "through the usual channels." The Prime Minister meets the convenience of the Leader of the Opposition and the Leader of the Opposition meets the convenience of the Government.

He also said:¹⁵

Democratic government thus demands not only a Parliamentary majority but also a Parliamentary minority. . . . the Opposition is at once the alternative to the Government and a focus for the discontent of the people. Its function is almost as important as that of the Government. If there is no Opposition there is no democracy.

Party warfare is thus essential to the working of the democratic system. Yet it will not function if it is carried to extreme. . . . In practice, government is by consent and opposition by agreement.

These being some of the primary conditions of the success of the party system, and therefore of constitutional government on a large scale, it remains to be seen whether any of these conditions was fulfilled in China during these years. In the first place, although two major political parties seemed to have been formed soon after the establishment of the Republic, their existence was only nominal. Party alignment at the time was in a state of great fluidity and both of the two major parties were badly split into several groups shortly after their formation. It is true that they did maintain branch organizations in the provincial capitals and other important centers, but the relationship between the parties and the masses was loose and haphazard or, to be exact, was entirely wanting. Being primarily composed of literati, members of

Parliament, and mandarins, they did not have more than a trifling following of convinced supporters among the masses. Nor did they ever announce any concrete and realistic programs. With perhaps the exception of the core of the Kuomintang, political parties during the period under review were organized to bargain for factional advantage with men of power rather than to realize any program of national interest. They frequently intrigued with the militarists. In the struggle for political position, one individual or group never assumed the honesty of the other, and in extreme cases they even incited the men of power to oppress or destroy each other. With such political parties, quiet political life with a democratic, constitutional government conducted in an orderly manner was, of course, an impossibility.

Another requisite of a successful constitutional democracy which was wanting in China was freedom from standing armed forces menacing the peaceful functioning of government. Dicey said:¹⁶

A permanent army of paid soldiers, whose main duty is one of absolute obedience to commands, appears at first sight to be an institution inconsistent with the rule of law

And in truth the existence of permanent paid forces has often in most countries and at times in England . . . notably under the commonwealth . . . been found inconsistent with the existence of what, by a lax though intelligible mode of speech, is called a free government.

Sir Henry Maine also said in his book entitled, Popular Government:¹⁷

No two organizations can be more opposed to one another than an army scientifically disciplined and equipped, and a nation democratically governed. The great military virtue is obedience; the great military sin is slackness in obeying. It is forbidden to decline to carry out orders, even with the clearest conviction of their inexpediency. But the chief democratic right is the right to censure superiors; public opinion, which means censure as well as praise, is the motive force of democratic societies. It has been found by recent experience that the more popular the civil institutions, the harder it is to keep the army meddling with politics An army which has once interfered with politics is under a strong temptation to interfere again. It is a far easier and far more effective way of causing an

opinion to prevail than going to a ballot-box, and far more profitable to the leaders.

The menace of standing armed forces to a democratic government is indicated by these two eminent scholars. In reality, the history of the modern world furnishes further actual evidence. Yet, the situation of China was that nearly all of her dynasties had been established by the sword and obliged to rule by the sword; and if they ruled badly, it was by sword that they had to be overthrown. Even since the establishment of the Republic, the executive head was always of necessity a soldier. Because the huge bulk of standing armed forces had been constantly maintained in the country, not only by the central government but also by local authorities or even by private adventurers, an ambitious militarist used soldiers to place him in high political position. Sometimes, selfish politicians were not reluctant to inspire standing armed forces to be their instrument in securing political objectives. This was especially true in the early period of the Republic. During that period, governments and constitutions were, as we have seen, frequently supported and overturned by military factions, and the great mass of the powerless citizens exercised scarcely any influence on the country's politics.

Under threat from huge armed forces, not only did the constitutions and policies of the central government receive unstable support and capricious denunciation, but provincial administrations were also often under the control of military men. From the year of Yüan Shih-k'ai's death in 1916, the militarists in the various provinces further became semi-independent authorities and the central government in Peking had little control over them. So-called warlordism prevailed in China. Warlordism naturally disunited the Republic, and a disunited republic certainly could not have a stable and powerful central government. Under such circumstances, no political machinery of a democratic nature could work smoothly.

Another requisite of a successful constitutional democracy which was not adequately developed in China is the public spirit and the sense of citizenship of the people. Where the people are lacking in public-spiritedness, a democratic government is almost always attended with little success. Similarly, where the people do not fully realize what their civic duties are, they are unlikely to have an ideal type of democratic government. Writing on this topic, John Stuart Mill made the following statement:¹⁸

When nobody, or some small faction, feels the degree of interest in general affairs of the State necessary to the formation of a public opinion, the electors will seldom make any use of the right of suffrage but to serve their private interest, or the interest of their locality, or of some one with whom they are connected as adherents or dependents. The small class who, in this state of public feeling, gain the command of the representative body, for the most part use it solely as a means of seeking their fortune. If the executive is weak, the country is distracted by mere struggle for place; if strong, it makes itself despotic, at the cheap price of appeasing the representatives, or such of them as are capable of giving trouble, by a share of the spoil; and the only fruit produced by national representation is, that in addition to those who really govern, there is an assembly quartered on the public, and no abuse in which a portion of the assembly are interested is at all likely to be removed.

What Mill mentioned happened in China, especially in the early period of the Republic. Even later, public spirit and sense of citizenship were still not sufficiently cultivated. This was due to the severity of the struggle for existence, the lack of instruction afforded by the participation of the private citizen in public functions, and the predominance of the ethical idea of family loyalty or family solidarity. The result was indifference on the part of the people to the nation's politics. Accordingly, they were unwilling and unable to do what is necessary for the preservation of a democratic government. A constitutional democracy existing in such an environment is necessarily always in danger.

Another requisite of a successful constitutional democracy lacking in China is respect for law. A constitutional government has been generally regarded as a government by law. Accordingly, obedience to law is an essential factor for the successful conduct of that kind of government. Otherwise, neither those who are governing nor those who are governed can be kept within their respective limits, and the constitution itself will become nothing more than a piece of paper. Indeed, one of the most important foundations of English constitutionalism is the supremacy of law. On the other hand, it has been usually considered that the weakness of the democratic governments in South America has been largely due to a lackadaisical attitude toward law.¹⁹ In the case of China, the people had been governed throughout their history not so much by

formal law as by a sense of morality and reason. So the Chinese people had no adequate tradition of respect for law. It is true that the decade and a half of the early Republican regime witnessed many an issue of legitimacy. In many controversies of a constitutional and political nature, the question of legitimacy was brought up and figured prominently or even predominantly. But it is to be remembered that the question of legitimacy was actually nothing more than a cloak, and that the real issue underneath the cloak on every occasion was the struggle for power. Thus, the question of legitimacy at that time should be regarded as scarcely more than a mere form. The absence of respect for law is, of course, detrimental to the proper operation of a government by a written constitution.

Another factor which prevented the healthy development of a constitutional democracy in China was the traditional and peculiar relation between the Chinese rulers and the Chinese people. In the Western world, the peoples who struggled for constitutional democracy before the nineteenth century were cruelly oppressed by their rulers. Because they wanted to liberate themselves from the despotic authority of their rulers, they decided to fight for democracy; and once they won it, they always fought for its preservation. But in China the situation was not quite the same. The Chinese people were not bothered by government so long as their legal share of taxes was paid and, on the other hand, the people did not care much about the ruler as long as he did not misuse his power. Whenever any ruler overstepped his authority, he could be ousted by the people; and so long as the rule was endurable, they did not like to take part in national politics. As a result, when they overthrew a ruler, they never had the wish to govern themselves. It is not an exaggeration to say that at the present time the desire of the mass of the Chinese people is still not to govern itself but rather to be well governed. So when free institutions were forced on them, such institutions came as something both unfamiliar and artificial. These free institutions did not naturally and promptly engage popular interest and sympathy but were regarded with an indifference which let them fall into the hands of those who sought to use the machinery of government for their own purposes.

Another factor which prevented China from building a modern government was foreign intervention. China's failure to achieve a stable constitutional government must not be interpreted solely in the light of her incapability, but an equal share of responsibility must be charged to certain foreign

powers who took part in obstructing China's progress and reconstruction. As a matter of record, the foreign powers had during the early period of the Republic, a tendency to emphasize what they considered stable government to the exclusion of such other criteria of good government as liberalism, progressivism, civilian supremacy, or decency in general. A noted Chinese student of political science observed as follows:²⁰

Up to almost the last days of Yüan Shih-k'ai's regime the foreign powers were with him. He was considered the man capable of providing a stable government and therefore also of protecting foreign interests. Even the outrageous murder of Sung Chiao-jên directed by Yüan Shih-k'ai himself did not deter the foreign powers from continuing to pin their hopes on him. In the uprising of the Kuomintang in 1913 against Yüan Shih-k'ai the powers were almost outspokenly hostile to the Kuomintang. In a similar way the foreign powers subsequently supported Tuan Ch'ijui, Ts'ao K'un and Wu P'ei-fu, Tuan Ch'ijui again, and finally Chang Tso-lin, in succession. These were all militarists' regimes. In supporting them, the foreign powers were giving recognition to none other than the strongest military power at the time.

Even in the South the powers also favored whatever military factions they considered capable of sustained existence. For instance, in the years of bitter strife between Sun Yat-sen and Ch'ên Ch'iung-ming, the British from Hong Kong almost plainly sided with the latter. In Sun Yat-sen's last years the Powers showed a marked willingness to thwart his success....

The pattern of foreign support, the discrimination in favor of the strongest elements in the existing regime, never contributed towards either the stability or the progress of the Chinese nation. It did not make for progress because the elements in the existing regime by virtue of their predominantly military support have always tended to be despotic and reactionary. Foreign support did not produce stability because the strongest elements usually became so despotic and reactionary that they invariably brought upon themselves first the disaffection of other groups and, when thus weakened, the general upheaval of the country.

As already mentioned, certain fundamental requisites of a successful democracy were lacking: educational background

and political experience on the part of the people, a genuine and powerful public opinion, two antagonistic but reconcilable political parties, freedom from the menace of standing armed forces, a public spirit and a sense of citizenship, respect for law, existence of the desire for self-government in the mass of the nation, and freedom from foreign intervention. But there was another reason for the failure of the central government in the early Republic—its maladjusted structure.

We are here primarily concerned, of course, with the Provisional Constitution of 1912, since that was the fundamental law of the nation for most of the time in the early years of the Republic and had great bearing upon the politics of the nation. The notable defects of the Provisional Constitution were, as indicated above, the extreme concentration of power in the legislative branch at the expense of the executive branch of the government, the lack of a clearcut division of powers and responsibilities between the President and the Premier, the omission of provisions concerning the provincial system, and the failure to provide an adequate means of bringing about harmony between the various branches of government in case disputes should arise. It is to be noted that under an unfavorable socio-political environment a democratic government could perhaps have some chance of success only if its structure were perfect. With a very faulty structure, how could it be expected to work smoothly? Indeed, it has been our contention that if the Provisional Constitution had made a better provision concerning the relationship between the executive and the legislative branches of government, many political controversies in the early years of the Republic might have been avoided, or at least would have been quieted before they became deadlocked and led to national crisis.

The bad effects of the faulty government structure as set up by the Provisional Constitution still might have been lessened if the Revolution in 1911 had brought about genuine and far-reaching socio-political changes in the nation. Specifically, if the imperial armed forces, which were largely created by Yüan Shih-k'ai during the late years of the Manchu Dynasty and became practically his personal possession after the establishment of the Republic, and the imperial officialdom had been completely wiped out, the country would have been unified to a greater degree, militarily and politically as well as ideologically. Thus a greater number of men would have considered a greater number of things from the same point of view. Republicanism and democracy would have been

the common convictions of at least the politically conscientious people of the nation. Political parties would certainly have carried on their warfare as usual, but the conflict between them would probably never have assumed the degree of violence which it displayed in the early years of the Republic. Furthermore, the unhappy situation of having the remnants of the old politico-military forces in the executive branch of government would never have arisen. In other words, if Yüan Shih-k'ai and the forces behind him had been entirely eliminated from China's politics by the Revolution of 1911, the preachers of republicanism would have had complete control over the newly created government. If any disagreement had developed between the different branches of government, the men in the various agencies would have found that they could have solved the problem by making compromises, and that neither of them would have had to destroy the opponent together with the existing constitutional structure.

The difficulties which China had in the early years of the Republic in her march toward a national government of a democratic nature were, indeed, various. While some of the difficulties could have been overcome without making great effort, there were also serious ones, the solution of which had to await the solution of the social problems of the nation as a whole. The most significant social problems in China during recent centuries have been those which resulted from economic and technical backwardness. As a result, a powerful and enlightened middle class, which has been the backbone of constitutional democracy in the Western World, was still not yet in existence in China. And it is strongly contended that unless the socio-economic conditions are so modernized as to enable a powerful and enlightened middle class to emerge and to take the place of the class of officials and literati in the control of government, no stable and genuinely democratic government could exist in China. Thus, the problem of Chinese government has been, and will continue to be closely connected with her socio-economic conditions.

REFERENCE MATTER

Heads of State and Premiers

- I Sun Yat-sen, Provisional President, January 1, 1912-March, 1912. Sun Yat-sen was elected Provisional President of the Republic by the revolutionaries shortly after the outbreak of the Wuchang Revolution of 1911. He organized a government in Nanking in accordance with the General Plan for the Organization of the Provisional Government of the Republic. Since the government was presidential in form, the President personally directed and supervised the heads of the various executive departments. The authority of Sun's government at the time extended only in the provinces which had repudiated the authority of the imperial government in Peking.
- II Yüan Shih-k'ai, President, March 10, 1912-October 10, 1913 (during this period the presidency was still provisional in nature) and October 10, 1913-June 6, 1916 (on October 10, 1913, Yüan became regular President of the Republic). In order to avoid further bloodshed, a compromise was made between the revolutionaries and the imperial court. Thus, upon the abdication of the Manchu Dynasty, Sun Yat-sen resigned from the presidency in favor of Yüan Shih-k'ai, the imperial Premier, and the government of the Republic was moved from Nanking to Peking. From March 10, 1912 to May 1, 1914 the Provisional Constitution was the supreme law of the land. According to this document, a Cabinet headed by a Premier was to be the real center of powers in the government. While the said document was in force, the following persons held the premiership:
- 1 T'ang Shao-i (a member of the T'ung-mêng Hui and a friend of President Yüan), March 13, 1912-June 29, 1912
 - 2 Lu Chêng-hsiang (a veteran diplomat), June 29, 1912-September 30, 1912.
 - 3 Chao Ping-chün (President Yüan's trusted lieutenant), September 30, 1912-July 19, 1913.
 - 4 Tuan Ch'i-jui (President Yüan's trusted lieutenant), July 19, 1913-July 31, 1913.
 - 5 Hsiung Hsi-ling (a member of the Chin-pu Tang), July 31, 1913-February 12, 1914.
 - 6 Sun Pao-ch'i (an ex-official of the imperial government), February 12, 1914-May 1, 1914.

While Yüan Shih-k'ai was President, he wielded the actual powers of government in spite of the fact that the Provisional Constitution provided for a system of ministerial responsibility.

On May 1, 1914, the Constitutional Compact superseded the Provisional Constitution. The Compact, which was in force until June, 1915, vested the actual powers of government in the President. The Secretary of State was actually an assistant president. The following men served at that post:

- 1 Hsü Shih-ch'ang (President Yüan's close friend), May 1, 1914–April 22, 1916.
 - 2 Tuan Ch'ü-jui, April 23, 1916–June 29, 1916 (after May 4, 1916, Tuan was given the title of Premier).
- III Li Yüan-hung, President (a hero of the Wuchang Revolution), June 7, 1916–July 17, 1917. Upon the death of Yüan Shih-k'ai, the Provisional Constitution was revived; meanwhile Vice-President Li Yüan-hung ascended to the Presidency. But at that time the Premier, instead of the President, wielded the actual powers. The following persons held the premiership under President Li:
- 1 Tuan Ch'ü-jui, June 29, 1916–May 23, 1917 (Tuan was already Premier before President Li took office, but his appointment was formally confirmed by the Parliament on June 29, 1916).
 - 2 Wu T'ing-fang (a member of the Kuomintang), May 23, 1917–May 28, 1917.
 - 3 Li Ching-hsi (an ex-official of the imperial government), May 28, 1917–July 2, 1917.
- IV Fêng Kuo-chang, President (Yüan Shih-k'ai's lieutenant and leader of the Chihli military clique), July 17, 1917–October 10, 1918. Vice-President Fêng Kuo-chang ascended to the presidency upon the forced resignation of President Li Yüan-hung that took place after the coup d'état of Chang Hsün in July, 1917. During President Fêng's reign, the nation was divided between North and South because of the controversy over the discontinuation of the old Parliament. In the South, the government was controlled by Sun Yat-sen and the southern militarists. In the North, the factions of President Fêng Kuo-chang (the Chihli military clique) and Premier Tuan Ch'ü-jui (the Anhwei military clique) struggled for power. But the internal struggles in the North at this time were still carried on behind the scene, and armed conflict had not yet taken place. The following persons held the premiership under President Fêng:
- 1 Tuan Ch'ü-jui, July 17, 1917–November 22, 1917.
 - 2 Wang Shih-chên (a senior leader of the Pei-yang military faction), November 30, 1917–March 23, 1918.
 - 3 Tuan Ch'ü-jui, March 23, 1918–October 10, 1918.
- V Hsü Shih-ch'ang, President, October 10, 1918–June 2, 1922. In order to avoid an open split within the Pei-yang military faction, it was arranged that Mr. Hsü Shih-ch'ang, a senior leader of the Pei-yang officialdom, should be elected President upon the resignation of both President Fêng and Premier Tuan. Hsü was therefore elected President by the so-called An-fu Parliament on September 1, 1918. During President Hsü's reign, the country was still divided between North and South. In the North, at first the Anhwei military clique and the An-fu Club practically dominated the Peking government.

After the Anhwei military clique was defeated by the Chihli military clique in July, 1920, the Chihli and the Manchurian military cliques (the former was led by Generals Ts'ao K'un and Wu P'ei-fu, the latter by General Chang Tso-lin) jointly controlled the Peking regime, with the Manchurian clique as the dominant figure of the two overlord groups. The following persons held the premiership under President Hsü:

- 1 Ch'ien Neng-hsün (an associate of President Hsü for many years), October 11, 1918–June 13, 1919.
- 2 Kung Hsin-chan (a politician affiliated with the Pei-yang military faction), June 13, 1919–September 24, 1919.
- 3 Chin Yün-p'êng (one of the Pei-yang militarists), September 24, 1919–May 14, 1920.
- 4 Sa Chên-ping (a naval official), May 14, 1920–August 9, 1920.
- 5 Chin Yün-p'êng, August 9, 1920–May 14, 1921.
- 6 Chin Yün-p'êng, May 14, 1921–December 18, 1921 (This was Premier Chin's reorganized Cabinet).
- 7 Liang Shih-i (former secretary-general to President Yüan Shih-k'ai and leader of the Chiao-t'ung clique), December 24, 1921–January 25, 1922.
- 8 Yen Hui-ch'ing (W. W. Yen, a veteran diplomat), January 25, 1922–April 8, 1922.
- 9 Chou Tzū-ch'i (a leader of the Chiao-t'ung clique), April 8, 1922–June 11, 1922.

VI Li Yüan-hung, President, June 11, 1922–June 14, 1923. After the defeat of General Chang Tso-lin by Generals Ts'ao K'un and Wu P'ei-fu in May, 1922, former President Li Yüan-hung was reinstalled by the winning clique. Meanwhile, the old Parliament was also revived in Peking. When Li was President, the country was still not unified. The President and the Cabinets were tools of the Chihli military clique which controlled northern and central China. The following persons held the premiership under President Li:

- 1 Yen Hui-ch'ing (W. W. Yen), June 11, 1922–August 5, 1922.
- 2 T'ang Shao-i (T'ang was appointed Premier by President Li but refrained from taking office. Wang Ch'ung-hui acted in his place), August 5, 1922–September 19, 1922.
- 3 Wang Ch'ung-hui (a noted jurist), September 19, 1922–November 19, 1922.
- 4 Wang Ta-hsieh (a politician closely affiliated with the Pei-yang militarists), November 29, 1922–December 10, 1922.
- 5 Chang Shao-tsêng (a militarist closely affiliated with the Chihli military clique), January 4, 1923–June 13, 1923.
- 6 Kao Ling-wei (General Ts'ao K'un's trusted friend), June 13, 1923–October 12, 1923 (acted as Regency Cabinet in the absence of President Li).

VII Ts'ao K'un, President (leader of the Chihli military clique), October 10, 1923–November 2, 1924. After President Li was forced to give up the presidency, the Chihli military clique bribed the Parliament and got General Ts'ao K'un elected President. Meanwhile, the Parliament enacted the so-called Ts'ao K'un Constitution

which was never completely put into effect. After the inauguration of President Ts'ao, the Peking government was put under the direct control of the Chihli military clique. General Wu P'ei-fu, the junior leader of the clique, played a very important role in the nation's politics during this period. He tried in vain to unify the country by force. The following persons held the premiership under President Ts'ao:

- 1 Kao Ling-wei, October 12, 1923–January 12, 1924.
- 2 Sun Pao-Ch'i, January 12, 1924–July 2, 1924.
- 3 Koo Wei-chün (V. K. Wellington Koo, a veteran diplomat), July 2, 1924–September 14, 1924.
- 4 Yen Hui-ch'ing (W. W. Yen), September 13, 1924–October 31, 1924.
- 5 Huang Fu (a well-known politician and student of military science), November 2, 1924–November 24, 1924 (acted as Regency Cabinet after the "retirement" of President Ts'ao).

VIII Tuan Ch'i-jui, Provisional Chief Executive, November 24, 1924–April 20, 1926. After the defeat of the Chihli military clique by the joint forces of Generals Chang Tso-lin and Fêng Yü-hsiang in October, 1924, General Tuan Ch'i-jui was made Provisional Chief Executive in Peking by the winning cliques. The so-called Ts'ao K'un Constitution was repudiated. While the Provisional Chief Executive was nominally in charge of all affairs of the government, the actual powers rested with the Manchurian and the Kuo-min Chün cliques. In the South, the reformed Kuomintang was preparing for the so-called Northern Expedition with the assistance of the Soviet Union. In Central China, General Wu P'ei-fu and his associates regained their control over the local administration. The Provisional Chief Executive at first personally supervised the heads of the various executive departments. For political reasons, a premiership was later added to the official list. The following persons held that post under Tuan:

- 1 Hsü Shih-ying (a politician closely affiliated with the Pei-yang military faction), December 26, 1925–February 15, 1926.
- 2 Chia Tê-yao (a Pei-yang militarist), February 15, 1926–April 20, 1926.

IX Regency Cabinets, May 13, 1926–June 17, 1927. After the defeat of the Kuo-min Chün by the joint forces of Generals Chang Tso-lin and Wu P'ei-fu in the spring of 1926, no agreement could be reached between the winning cliques in regard to the procedure to be followed in reconstituting the central government. Eventually the system of Regency Cabinet was hit upon. The Regency Cabinets formed during this period proved not so much different from the previous Cabinets. They remained tools of the overlord militarists. The following persons served as heads of the Regency Cabinets:

- 1 Yen Hui-ch'ing (W. W. Yen), May 13, 1926–June 22, 1926.
- 2 Tu Hsi-kuei (a naval official), June 22, 1926–October 1, 1926.
- 3 Koo Wei-chün (V. K. Wellington Koo), October 1, 1926–June 17, 1927.

- X Chang Tso-lin, Generalissimo (leader of the Manchurian or Fêng-tien military clique), June 17, 1927–June 4, 1928. In order to combat the Kuomintang's expeditionary forces more effectively, General Chang Tso-lin proclaimed himself dictator, with the title of "Generalissimo of the Military Government of China." A Cabinet was meanwhile appointed to assist him in political affairs, with P'an Fu (a politician closely affiliated with the Manchurian military clique) holding the premiership. Generalissimo Chang and the Premier withdrew from Peking on June 3, 1928, when the Kuomintang's expeditionary forces reached Peking and the Peking government was thereby ended.

Notes

The titles of all books, periodicals, or government publications written in Chinese are followed by asterisks when they appear in footnotes. Chinese characters and romanization thereof are inserted only in the bibliography.

Chapter I

- 1 For a detailed account of the Wuchang Revolution, see E. J. Dingle, China's Revolution, 1911-1912; Ku Chung-hsiu, A History of the Founding of the Chinese Republic;^{*} and Ts'ao Ya-po, True History of the Wuchang Revolution.^{*}
- 2 Chien Tuan-sheng, The Government and Politics of China, pp. 30-31.
- 3 See E. R. Hughes, The Invasion of China by the Western World.
- 4 At the beginning of the Manchu Dynasty, the Grand Secretariat acted as the Emperor's privy council, but its functions were gradually taken over by the Grand Council after the latter's establishment in 1730. For a concise description of the disintegration of the political system, see H. M. Vinacke, Modern Constitutional Development in China, pp. 1-22.
- 5 The notable rebellions were: (1) the Taiping Rebellion, 1850-64, led by Hung Hsiu-ch'üan; (2) the Nieh Rebellion, 1848-68 (approximately), led by Chang Lo-hsing and Chang Tsung-yu; (3) the Miaotze Rebellion in Kweichow, 1855-72, led by Chang Hsiu-mei; (4) the Mohammedan Rebellion in Yunnan, 1855-73, led by Tu Wên-hsiu; and (5) the Mohammedan Rebellion in the northwestern provinces, 1861-78, led by Ma Hua-lung and Pai Yen-hu. For more information about these rebellions, see Ch'ên Kung-lu, History of Modern China,^{*} pp. 131-219.
- 6 For a summary of the reform work during this period, see Li Chien-nung, Political History of China in Last Hundred Years^{*} I, 121-170.
- 7 Wu Ching-hsiung and Huang Kung-chiao, A History of Constitution-Making in China,^{*} I, 8-9.
- 8 For a detailed account of the "Hundred Days" of reform, see M. E. Cameron, The Reform Movement in China, 1898-1912, pp. 23-55; and Li, Hundred Years,^{*} I, 174-92.
- 9 For an English text of the edict, see J. O. P. Bland and E. Backhouse, China under the Empress Dowager, pp. 419-24.
- 10 Wang Shih-chieh and Ch'ien Tuan-shêng, Comparative Constitutional Law,^{*} II, 135.

- 11 China Year Book, 1912, p. 353.
- 12 For an English version of the two documents, see ibid., pp. 359-61.
- 13 Cf. H. F. MacNair, China in Revolution, pp. 18-19; and Vinacke, Constitutional Development, pp. 90 and 149.
- 14 China Year Book, 1912, pp. 377-96.
- 15 Ibid., pp. 372-73.
- 16 Article 2 of the Charter of the T'ung-mêng Hui; the charter and the story of the formation of this party can be found in Chou Lu, Draft History of the Kuomintang,* I, 33-129.
- 17 H. M. Vinacke, A History of the Far East in Modern Times, p. 231.
- 18 For an account of these uprisings, see Fêng Tzū-yu, History of the Revolution Before the Founding of the Republic.*
- 19 The outbreak of the Wuchang Revolution was not ordered by the headquarters of the T'ung-mêng Hui, but was initiated by the local revolutionary elements; this fact was clearly revealed by Huang Hsing's two letters to Fêng Tzū-yu in the fall of 1911. These two letters are quoted by Li Chien-nung, Political History of China in the last Thirty Years,* pp. 182-84.
- 20 Shantung, one of the fourteen provinces which had declared independence from the Manchu court, shortly returned to the imperial fold.
- 21 For Ch'êng and T'ang's telegram, see Sun Yao, Materials for the History of the Republic of China,* I, 24-25.
- 22 Chou I-ping and Lo Chih-yüan, A History of the Development of the Constitutional Government in China,* p. 39.
- 23 Wu Tsung-tz'ü, A History of the Chinese Constitutional Law,* I, 3-4. For a Chinese text of the General Plan for the Organization of the Provisional Government, see Wang and Ch'ien, Comparative Constitutional Law,* II, 250-52.
- 24 This controversy developed primarily between the revolutionary factions in Wuchang and Shanghai. However, since peace negotiations were going on between the revolutionary forces and the representatives of Yüan Shih-k'ai, Premier of the Manchu Court, many delegates to the Conference held that the election of the Provisional President should be postponed in order to give this post to Yüan if he later espoused the cause of the Republic. They, therefore, favored the appointment of a generalissimo and a deputy generalissimo to discharge the duties of the Provisional Government of the Republic for the time being. This also delayed the election of the Provisional President.
- 25 In the election of the Provisional President, each province had one vote, and delegates from seventeen provinces participated in this election.
- 26 The first amendment was made on January 2, 1912. The important changes were: (1) the creation of the post of Vice-President; (2) a provision that the Provisional President had the right to determine without the consent of the legislature the organization of all offices and to issue the regulations fixing the duties of officials; and (3) a provision that ministers should countersign all laws and orders issued by the Provisional President. The second amendment was made on January 3, 1912. The important changes were: (1) a

- provision that the Provisional President and Vice-President should be elected by the representatives of the various provinces by a vote of more than two-thirds of the total amount of votes cast, each province having one vote; (2) a provision that the Provisional President must secure the consent of the legislature when appointing civil and military officials and when ordaining and establishing administrative and official regulations; and (3) abrogation of the provision that ministers should countersign all laws and orders issued by the President. For a more detailed account of these amendments, see Chou and Lo, Constitutional Government, pp. 41-43.
- 27 See the proposed Declaration for a Military Government, drafted and published by the T'ung-mêng Hui in 1905, in Chou, Draft History of the Kuomintang,* I, 43-46.
- 28 It is to be noted that this program of three stages of revolution and reconstruction, outlined by the T'ung-mêng Hui under the leadership of Sun Yat-sen before the 1911 Revolution, is somewhat different from what Sun himself later designed in his pamphlet entitled Fundamentals of National Reconstruction (1924). In the latter work, Sun put the revolutionary party, i.e., the Kuomintang, instead of a military government, in the position of trustee ruling body during the political tutelage period. An English text of this pamphlet may be found in Chien, Government and Politics, pp. 462-64.
- 29 These were, as a matter of fact, not even mentioned by it.
- 30 Ch'ien Tuan-shêng et al., A History of the Political System of the Chinese Republic,* I, 2-5.
- 31 Art. 1 of the General Plan.
- 32 Art. 2 of the General Plan.
- 33 Art. 5 of the General Plan.
- 34 On January 3, 1912, President Sun personally went to the floor of the Conference and nominated nine persons as heads of the various departments. The Conference strongly objected to one and suggested that two others should be appointed as heads of departments different from those to which they had been nominated by the President. President Sun immediately gave way.
- 35 Not all measures passed by the National Council were to be executed by the various departments under the direction of the President, but only those which had been signed by the latter or had been repassed by the Council by a two-thirds vote after presidential veto.
- 36 The election of Yüan Shih-k'ai as President on March 14, 1912, was formally recommended by Sun.
- 37 For example, before the appointment of the various ministers and the election of Yüan Shih-k'ai as President, Sun personally went to the legislature to defend his recommendations.
- 38 Art. 14 of the General Plan.
- 39 Chou, Draft History of the Kuomintang,* II, 955.
- 40 Art. 3 of the General Plan.
- 41 Art. 4 of the General Plan.
- 42 Chang Chung-fu, History of the Foreign Relations of the Republic of China,* I, 49. It is to be noted that the foreign power maintained an attitude of neutrality toward the war between the imperial and

revolutionary forces and meanwhile held up the money payments, which were stipulated in loan contracts, to the imperial government. See ibid.

43 Art. 6 of the General Plan.

44 No evidence is available to show that any such court ever existed in Nanking in the spring of 1912.

45 Ch'ien, et al, Political System,* I, 4.

46 Arts. 8 and 9 of the General Plan.

47 Shortly after the establishment of the Provisional Government in Nanking, two small parties were formed whose leaders had been eminent figures of the T'ung-mêng Hui. They were the Chung-hua Min-kuo Lien-ho Hui (the United Society of the Republic of China), under the leadership of Chang Ping-lin, and the Min Shê (the People's Society), under the leadership of Li Yüan-hung, Sun Wu, Lan T'ien-wei, and Liu Ch'êng-yü. The former derived its membership largely from Chekiang and Kiangsu, the latter from Hupei. Shortly, the Chung-hua Min-kuo Lien-ho Hui was amalgamated with the Yü-pei Li-hsien Kung-hui (the Association for a Constitutional Government), which was organized in 1906 by Chang Chien and other prominent figures in Kiangsu, Chekiang, and Fukien for the promotion of a constitutional government under the Manchu monarch. The newly amalgamated party was called the T'ung-i Tang (the United Party). Hostile to the T'ung-mêng Hui, the T'ung-i Tang was politically moderate and tended to support Yüan Shih-k'ai. Another small party at the time was the Kung-ho Chien-shê T'ao-lun Hui (the Society for the Discussion of the Reconstruction of the Republic), under the leadership of T'ang Hua-lung, Lin Ch'ang-min, and Sun Hung-i, who all originally belonged to the Hsien-yu Hui (the Society of the Friends of a Constitutional Government) during the last few years of the Manchu Dynasty. See Yang Yu-chün, A History of Chinese Political Parties,* pp. 48-56.

48 Ibid., and Sun, Materials,* I, 67-70.

49 Art. 15 of the General Plan.

50 Art. 50 of the General Plan.

51 Art. 16 of the General Plan.

52 Sec. 6, Art. 11 of the General Plan.

53 Hsieh Chêng-min, A History of Legislation of the Republic of China,* pp. 58-59.

54 Secs. 3-6, Art. 11 of the General Plan.

55 With regard to the financial disorder of this period, see the Department of Finance's reply to the inquiry concerning the issue of military notes by the Military Governor of Shanghai through the Chung-hua Bank, Sun, Materials,* I, pp. 39-40.

56 In the cases of the Loans secured by the properties of the China Merchants Steamship Company and the Han-yeh-p'ing Iron and Steel Company, and the Loans made by the Four-Power Consortium, the Council's consent was sought only after advances already had been made by the lenders. Cf. ibid., I, 35-38, and 45-46.

57 Art. 57 of the General Plan.

58 See above p. 13.

- 59 Sec. 1, Art. 11 of the General Plan.
- 60 Sec. 8, Art. 11 of the General Plan.
- 61 Sec. 7, Art. 11 of the General Plan.
- 62 Other important work done by the Council in Nanking was the making of the Provisional Constitution and the election of Yüan Shih-k'ai as Provisional President after the Manchu court abdicated.
- 63 The original version of the General Plan provided for Departments of Foreign Affairs, Interior, Finance, Military Affairs, and Communications.
- 64 Art. 18 of the General Plan.
- 65 See above, footnote 26.
- 66 The three men were: Minister of Interior Ch'êng Tê-ch'üan, Minister of Industry Chang Chien, and Minister of Communications T'ang Shou-ch'ien. All of them later also served under Yüan Shih-k'ai.
- 67 He was Minister of Navy Admiral Huang Chung-ying.
- 68 For an analysis of the characteristics of the Chinese politicians and intellectuals, see T'ao Hsi-shêng, A Historical Analysis of Chinese Society.*
- 69 The posts of deputy ministers were provided in the Law on the Organization and Powers of the Departments of the Central Administration. For its text, see Gazette of the Provisional Government,* January 30, 1912.
- 70 Ch'ien et.al., Political System,* I, 6-7.

Chapter II

- 1 At this time, Emperor Hsüan T'ung was only an infant, so his father, Prince Tsai-li, who was also the brother of the late Emperor Kuang Hsü, was appointed regent.
- 2 China Year Book, 1912, pp. xiii-xiv.
- 3 B. L. P. Weale, The Fight for the Republic, pp. 26-28; and Li, Thirty Years,* pp. 40-43.
- 4 For a text of the edict of October 27, see China Year Book, 1912, p. xxxiii.
- 5 Previously, on November 5, the imperial court had, under pressure, promulgated a constitution known as "The Nineteen Articles," stipulating a government of ministerial responsibility.
- 6 Weale, Fight for the Republic, p. 33.
- 7 Ibid., p. 34; and Vinacke, Far East in Modern Times, p. 222.
- 8 At the time, the Peking treasury was empty and the imperial household treasure was also exhausted. Meanwhile Nanking had no treasury or treasure, except a small amount from private loans. Both were prevented from financing themselves from foreign sources by reason of the financial neutrality agreed to by the Powers. If peace had not come, it is possible that the loan embargo might have been lifted in Yüan's favor, since the foreign powers looked upon him as the strong man capable of preventing possible eventual chaos.
- 9 Li, Thirty Years,* pp. 220-27.
- 10 Actually the Articles on the Favorable Treatment of the Manchu Court after Abdication were drafted by Yüan Shih-k'ai. The National

- Council in Nanking simply passed it at his secret suggestion on February 6, 1912. A text of these articles is to be found in Sun, Materials,* I, pp. 48-50.
- 11 For an English version of these edicts, see China Year Book, 1913, pp. 481-84.
 - 12 Ibid., p. 482.
 - 13 Li, Thirty Years,* pp. 237-38.
 - 14 China Year Book, 1913, pp. 385-86.
 - 15 Other conditions were: (1) Sun Yat-sen would not quit his post until Yüan arrived in Nanking, and (2) the new President, i.e., Yüan, should obey the Provisional Constitution to be enacted by the National Council and should preserve all existing laws until the Council changed them. See Hsü Chih-yen, A Comprehensive Chronicle of the Ten Years of the Republic,* pp. 39-40.
 - 16 Li, Thirty Years,* pp. 239-40.
 - 17 Provisional Gazette,* March 9, 1912.
 - 18 For a Chinese text, see ibid., March 15, 1921; for an English text, see Pan Wei-tung, The Chinese Constitution: A Study of Forty Years of Constitution-Making in China, pp. 150-56.
 - 19 Li, Thirty Years,* p. 242.
 - 20 Besides political reasons, the cabinet system was also advocated by some people on its merits. For example, the T'ung-i Tang, which was in practical alliance with Yüan Shih-k'ai on many issues, subscribed to such a system in its platform purely on nonpolitical grounds. See Yang, Chinese Political Parties,* pp. 51-52.
 - 21 Arts. 5-14 of the Provisional Constitution.
 - 22 Art. 15 of the Provisional Constitution.
 - 23 The election of the regular president in the fall of 1913 will be treated later, p. 101.
 - 24 See above p. 24.
 - 25 Art. 45 of the Provisional Constitution.
 - 26 Art. 34 of the Provisional Constitution.
 - 27 Art. 44 of the Provisional Constitution.
 - 28 P'an Ta-ta, An Outline of the Chinese Constitutional History,* pp. 21-22; and M. J. Bau, Modern Democracy in China, pp. 93-96.
 - 29 Arts. 23 and 38 of the Provisional Constitution.
 - 30 Art. 23 of the Provisional Constitution.
 - 31 See Ch'ien Tuan-shêng et al., Political System,* I, 9-10; Chou and Lo, Constitutional Government,* pp. 58-59; and Ch'ên Ju-hsüan, A History of the Chinese Constitution,* p. 32.
 - 32 Art. 30 of the Provisional Constitution.
 - 33 Art. 31 of the Provisional Constitution.
 - 34 Art. 33 of the Provisional Constitution.
 - 35 Art. 34 of the Provisional Constitution.
 - 36 Hsieh, Legislation,* pp. 73-77.
 - 37 The so-called "Second Revolution" was precipitated by the removal of three military governors who were members of the Kuomintang, which was hostile to the President.
 - 38 Chou and Lo, Constitutional Government,* pp. 58-59 (translation mine).

- 39 Wu Ch'iu, The Rise and Fall of the Pei-yang Military Faction, pp. 1-16; and Tsiang T'ing-fu, Recent History of China,* pp. 120-21.
- 40 The Law on the Official System of the Board of the Chief of the General Staff, The Government Gazette* June 31, 1912; and the Amendment in ibid., October 6, 1915.
- 41 General Tuan Ch'i-jui and Admiral Liu Kuan-hsiung held these posts respectively throughout Yüan's regime, except that there was a short period of interruption in General Tuan's case.
- 42 Li, Thirty Years,* 269-71.
- 43 Art. 37 of the Provisional Constitution.
- 44 Arts. 34 and 35 of the Provisional Constitution.
- 45 The conclusion of the Reorganization Loan Agreement by the Five-Power Consortium with the Chinese Government without awaiting the sanction of the Chinese Parliament apparently encouraged Yüan Shih-k'ai to disregard the authority of that body.
- 46 For an account of the case of the Five-Power Consortium Loan, see China Year Book, 1914, pp. 379-403; and Li, Thirty Years,* pp. 283-84.
- 47 Art. 39 of the Provisional Constitution.
- 48 Art. 48 of the Provisional Constitution.
- 49 Art. 42 of the Provisional Constitution.
- 50 Circular telegrams became the fashionable way to express or discuss political views or problems on a nationwide basis in China after the Revolution.
- 51 This was Yüan Shih-k'ai's habitual intrigue, intended to show that he himself was not the original author of unpopular or illegal actions.
- 52 See above p. 32.
- 53 It was sent up in accordance with the Law on the Official System of the National Bureau of Archives, which is contained in Government Gazette,* October 28 and 29, 1912.
- 54 Weale, Fight for the Republic, p. 127; and Huang Yüan-yung, Post-humous Works of Huang Yüan-shêng,* IV, 29.
- 55 Art. 43 of the Provisional Constitution.
- 56 Wangteh Yü, The English Cabinet System, p. 50.
- 57 For the evils of this requirement, see above pp. 31-32.
- 58 Messrs. Lu Chêng-Hsiang and Chao Ping-chün did not belong to any party but were confirmed as premiers by the legislature.
- 59 Art. 47 of the Provisional Constitution.
- 60 T'ang Shao-i was promptly confirmed as Premier because he had joined the T'ung-mêng Hui, which occupied the largest number of seats in the National Council. Hsiung Hsi-ling was readily confirmed as Premier because he was not only favored by the Chin-pu Tang but was preferred by the moderate elements of the Kuomintang who wished to relax the political tension created by the so-called "Second Revolution."
- 61 Chao Ping-chün was confirmed by the legislature because many leaders of the Kuomintang at the time wanted to coöperate with Yüan Shih-k'ai, and by confirming Chao, who was Yüan's close friend, they thought that such an objective might be achieved. See Li, Thirty Years,* pp. 271-74.

- 62 For the text of the Law on the Official System of the Cabinet, see Government Gazette,* June 27, 1912.
- 63 Art. 9 of the Law on the Official System of the Cabinet.
- 64 T'ang Shao-i's Cabinet existed from April, 1912 to June, 1912.
- 65 Huang, Huang Yüan-shêng,* II, 4.
- 66 Li, Thirty Years,* pp. 265-66.
- 67 Ch'ên Shêng-ts'ung, "A Brief Account of the Cabinets of the Chinese Republic," New China,* II (May, 1920), 3.
- 68 News items in Eastern Miscellany,* VIII (June 1, 1913), 3.
- 69 Li, Thirty Years,* p. 265; and Huang, Huang Yüan-shêng,* II, 6.
- 70 Li, Thirty Years,* p. 266.
- 71 Mr. Chao was, at first, Acting Premier in July, 1912, during Premier Lu Chêng-hsiang's absence. He became Premier in September of the same year and held that post until July, 1913.
- 72 Ch'ên Kung-fu, Chinese History of the Past Thirty Years,* pp. 103-4.
- 73 Ibid.
- 74 When Mr. Hsiung became Premier, President Yüan already was at serious odds with the Kuomintang members of Parliament. Since Mr. Hsiung himself also did not have a good opinion of that party and wished to get rid of its obstructive activities in the Parliament, he apparently had agreed with, if not actively encouraged, the President to be tough in dealing with that body.
- 75 Arts. 10 and 11 of the Law on the Official System of the Cabinet.
- 76 Art. 8 of the Law on the Official System of the Cabinet.
- 77 Arts. 3, 4, and 5 of the Law on the Official System of the Cabinet.
- 78 Members of Lu Chêng-hsiang's and Chao Ping-chün's Cabinets were in fact entirely selected by President Yüan. When Hsiung Hsi-ling was proceeding to form a Cabinet, he found that the President already had prepared a list of names of the persons who were to be the most important Cabinet members. Even T'ang Shao-i lacked a free hand in this matter.
- 79 In the dispute, Premier T'ang favored the policy of securing loans from an independent Belgian financial firm in order to avoid the monopoly of the Four-Power Consortium. But Minister Hsiung wanted to sign a loan contract with the Consortium. With the support of the President, Hsiung's policy eventually prevailed.
- 80 Arts. 6 and 7 of the Law on the Official System of the Cabinet.
- 81 Sec. 12, Art. 19 of the Provisional Constitution.
- 82 Harold S. Quigley, "Some Aspects of China's Constitutional Problems," Political Science Quarterly, XXXIX (June, 1924), 193.
- 83 This does not count General Tuan Ch'í-jui, who was Acting Premier for several weeks between Mr. Chao Ping-chün's resignation and Hsiung Hsi-ling's appointment in 1913.
- 84 Mr. T'ang's resignation was, as already mentioned, due to his disagreement with the President; and Mr. Hsiung's resignation took place while the Parliament was no longer in existence.
- 85 It was provided in the Law on the Official System of Cabinet Secretariat; for its text, see Government Gazette,* July 19, 1912.
- 86 The post of the chief-secretary was abolished when Hsiung Hsi-ling became Premier in the winter of 1913; and the number of the senior

- and junior secretariates was, meanwhile, enlarged. See ibid., December 23, 1913.
- 87 See Huang, Huang Yüan-shêng,* II, 8-10.
- 88 See The Law on the Official System of the Bureau of Legal Affairs, Government Gazette,* July 19, 1912.
- 89 See the Law on the Official System of the Bureau for Civil Appointments, ibid., July 21, 1912.
- 90 See the Law on the Official System of the Bureau of Printing and Engraving, ibid., July 17, 1912.
- 91 See the Law on the Official System of the Bureau of Mongolian and Tibetan Affairs, ibid., July 25, 1912.
- 92 See the Law on the Official System of the Bureau for the Investigation of Merit, ibid., July 23, 1912.
- 93 See the Law on the Official System of the Bureau for the Compilation of the Various Codes of Law, ibid., July 17, 1912.
- 94 The Bureau for Water Conservation was not established until June 8, 1914.
- 95 For the Laws on the Official System of the Various Departments, see Government Gazette* July 19, 24, August 3, 9, September 1, 2, October 9, and November 3, 1912.
- 96 Ibid.,* December 23, 1913.
- 97 When Generalissimo Chang Tso-lin organized his Military Government in Peking in 1927, the number of the departments was further reduced to eight; for the details, see p. 159.
- 98 For the appointment of the ministers and their relationships with each other and with other government agencies, see above, pp. 31-32.
- 99 To the Departments of Finance and Interior, one more deputy minister was respectively added at the end of 1913. See Government Gazette,* December 23, 1913.
- 100 Art. 10 of the Law Governing General Regulations for the Organization of the Various Departments.
- 101 On May 30, 1912, thirteen members of the National Council raised the question how Deputy Minister Wang Chêng-t'ing could perform the political duties for the Minister of Industry and Commerce, since the Law Governing General Regulations for the Organization of the Various Departments only provided that in case a minister was unable to discharge his duties, the deputy minister could take care of his routine business. A few days later, the Cabinet submitted a written reply saying that Mr. Wang had secured a special commission from the President and that he was acting in the capacity of "Officiating Minister." See A Compendium of Bills and Resolutions of the National Council,* Second Collection, IV, 1-3.
- 102 See Government Gazette,* December 23, 1913.
- 103 The foundation of the traditional Chinese civil service system was largely built during the early period of the Han Dynasty (206 B.D. to A.D. 221). For a concise account of the system in that time, see Tsêng Tzū-shêng, The System of the Civil Service During the Han Dynasty.*
- 104 The so-called "special" rank was reserved for the ministers and other important officials, so that it did not come within the scope of the civil service.

- 105 See the Law on the Procedure for the Appointment of Civil Officials, Government Gazette,* January 9, 1913; and the Law on the Ranks of the Central Administrative Officials, ibid., October 16 and 17, 1912.
- 106 See the Law on the Official Salaries of the Central Administrative Officials, ibid., October 16 and 17, 1912.
- 107 The Premier received \$1,500 salary monthly, and the ministers received \$1,000 respectively.
- 108 There were two disciplinary commissions. One was to deal with the cases concerning officials of the "selected" and "recommended" ranks, another with that concerning those of the "delegated" rank.
- 109 The Law on the Protection of the Civil Service, Government Gazette,* January 9, 1913.
- 110 Even if a succeeding minister belonged to the same party as the resigning minister, the personnel of the ministry was usually changed on a large scale in order that the new minister might confer favors upon his own relatives and friends.
- 111 For an account of the traditional Chinese civil examinations, see Têng Ssü-yü, A History of the Chinese System of Official Examination.*
- 112 For the Kuomintang regime's examination system, see Chien, Government and Politics, pp. 231-46.
- 113 All the statements on the examination system of this period are based upon the provisions of the Law on the Civil Service Examinations; see Government Gazette,* January 9, 1913.
- 114 For the text, see ibid., January 9, 1913.
- 115 For the decree, see ibid., January 20, 1914.
- 116 According to the presidential decree, a commission was to consist of a chairman and two to four commissioners.
- 117 For its text, see Government Gazette,* January 9, 1913.
- 118 For a text of the Draft Law on the Organization of the Board of Audit, see Commercial Press (compiler), New Laws and Decrees of the Kuang-hsü Reigning Years,* XX, 113-114. For the text of the Provisional Regulations on the Official System of the Bureau of Audit, see Government Gazette,* February 26, 1912.
- 119 Art. 8 of the Provisional Regulations on the Official System of the Bureau of Audit.
- 120 For the bureau's function in inspecting the national debts one may also refer to the Provisional Regulations on the Use of National Debts; for a text, see Government Gazette,* November 16, 1912.
- 121 See the Provisional Regulations on the Official System of the Bureau of Audit and the Provisional Rules on Government Auditing; for their texts, see ibid., November 16, 1912.
- 122 Here is meant the period before the Provisional Constitution was replaced by the Constitutional Compact in November, 1913.
- 123 Hsieh, Legislation,* pp. 60-61.
- 124 For a text, see Complete Digest of Laws and Ordinances* (Peking 1912), I, 33-43.
- 125 Art. 5 of the Law Governing the National Council.
- 126 Art. 10 of the Law Governing the National Council.

- 127 Arts. 9, 11, and 14 of the Law Governing the National Council.
- 128 Arts. 25 and 26 of the Provisional Constitution.
- 129 Art. 20 of the Law Governing the National Council.
- 130 Art. 24 of the Provisional Constitution.
- 131 Art. 35 of the Law Governing the National Council.
- 132 Art. 18 of the Law Governing the National Council.
- 133 The Speaker at the time was Wu Ching-lien, a noted member of the T'ung-i Kung-ho Tang (the United Republican Party) who later joined the Kuomintang. The Deputy Speaker was T'ang Hua-lung, an eminent member of the Kung-ho Tang.
- 134 Art. 19 of the Law Governing the National Council.
- 135 Art. 20 of the Law Governing the National Council.
- 136 Art. 23 of the Law Governing the National Council.
- 137 Arts. 96 to 100 of the Law Governing the National Council.
- 138 A. L. Lowell, The Government of England, I, 264.
- 139 Arts. 30 and 50 of the Law Governing the National Council.
- 140 Art. 26 of the Law Governing the National Council.
- 141 Art. 30 of the Law Governing the National Council.
- 142 Art. 49 of the Law Governing the National Council.
- 143 The Council was to consist of 126 members. Tibet failed to send its five representatives to the Council.
- 144 The Kuo-min Hsieh-chin Hui was headed by Fan Yüan-lien, who became Minister of Education in Lu Chêng-hsiang's Cabinet in July, 1912. The Kuo-min Tang (incidentally, not to be confused with the Kuomintang of Sun Yat-sen and Sung Chiao-jên) was headed by P'an Hung-ting, who was identified at the time as a pro-American politician. The Min-kuo Kung-hui operated under the leadership of Chang Kuo-wei, a pro-Yüan Shih-k'ai man. With regard to the T'ung-i Tang and the Min Shê, reference has been made in footnote 47 of Chapter I. A common characteristic of these five parties was the predominance of former officials of the Manchu regime and ex-monarchical constitutionalists in their membership. For more information, see China Year Book, 1914, pp. 724-25; and Yang, Chinese Political Parties,* pp. 56-57.
- 145 The T'ung-i Kung-ho Tang was headed by Ku Chung-hsiu, Wu Ching-lien, and Yin Ju-li, all politicians of ability. Since some of its members were previously affiliated with the T'ung-mêng Hui in one way or another, the T'ung-i Kung-ho Tang voted more often with the T'ung-mêng Hui members in the Council, even though its political attitude toward Yüan Shih-k'ai was more moderate than that of the T'ung-mêng Hui. Other small parties at the time were in such a state of constant fluidity that any attempt to identify them is senseless.
- 146 Since the Kung-ho Tang was organized by some small conservative parties for the purpose of challenging the T'ung-mêng Hui on behalf of Yüan Shih-k'ai, many T'ung-mêng Hui members thought that their party should also be amalgamated with other small parties in order to control the legislature and through it the Cabinet. But Dr. Sun Yat-sen was, at first, not enthusiastic about this idea. But under the strong agitation of Sung Chiao-jên, an agree-

ment was eventually reached on August 13, 1912 between the T'ung-mêng Hui and four other parties, and an amalgamated party was organized with the name of Kuomintang. Prior to the amalgamation, the Kuo-min Kung-chin Hui was headed by Wu T'ing-fang and Wang Ch'ung-hui, who were Cabinet members under Sun Yat-sen in Nanking. The Kuo-min Kung-tang was organized in Shanghai early in 1912 by Wang Jên-wên and others, its announced objective being the consolidation of the Republic through strengthening the political parties. The Kung-ho Shih-chin Hui was also organized in Shanghai early in 1912 by Tung Chih-yün, whose political views cannot be detected at present because of lack of data. See China Year Book, 1914, pp. 726-28; and Yang, Chinese Political Parties,* pp. 57-60.

- 147 The Min-chu Tang was organized by the amalgamation of the Kung-ho Chien-shê T'ao-lun Hui, the Kung-ho T'ung-i Tang (the Republican United Party), and other minor political groups in North China. The amalgamation was inspired by Liang Ch'i-ch'ao, who, upon his return from abroad in October, 1912, again wanted to become active in China's politics. At this time, Liang planned to collaborate with Yüan Shih-k'ai in the latter's fight against what was regarded the radical Kuomintang. The political complexion of the membership of the Min-chu Tang was, in fact, indistinguishable from that of the Kung-ho Tang. See Yang, Chinese Political Parties,* pp. 60-61.
- 148 The National Council held its first meeting in Peking on April 29, 1912. It dissolved on April 8, 1913, when the Parliament was convened. Taking its work in Nanking into account, it held 220 meetings in which more than 230 laws and other measures were enacted. See Eastern Miscellany,* VIII (June I, 1913), 5; and Hsieh, Legislation,* pp. 72-73.
- 149 Art. 4 of the Law Governing the National Council.
- 150 Art. 31 of the Law Governing the National Council.
- 151 Art. 32 of the Law Governing the National Council.
- 152 Arts. 33 and 34 of the Law Governing the National Council.
- 153 Art. 36 of the Law Governing the National Council.
- 154 Art. 37 of the Law Governing the National Council.
- 155 Art. 44 of the Law Governing the National Council.
- 156 Arts. 75 and 76 of the Law Governing the National Council.
- 157 But the Committees could only do this through the Speaker.
- 158 Art. 38 of the Law Governing the National Council.
- 159 Art. 39 of the Law Governing the National Council.
- 160 Art. 40 of the Law Governing the National Council.
- 161 Art. 41 of the Law Governing the National Council.
- 162 Art. 42 of the Law Governing the National Council.
- 163 For a list of the important laws passed by the National Council, see Hsieh, op.cit., pp. 73-77; and China Year Book, 1914, pp. 500-2.
- 164 Secs. 2 to 4, Art. 19 of the Provisional Constitution.
- 165 Art. 35 of the Provisional Constitution.
- 166 Sec. 6, Art. 19 of the Provisional Constitution.
- 167 Art. 58 of the Law Governing the National Council.

- 168 Art. 69 of the Law Governing the National Council.
- 169 Art. 70 of the Law Governing the National Council.
- 170 Art. 71 of the Law Governing the National Council.
- 171 Arts. 72 and 74 of the Law Governing the National Council.
- 172 Art. 73 of the Law Governing the National Council.
- 173 Arts. 65 and 66 of the Law Governing the National Council.
- 174 Art. 67 of the Law Governing the National Council.
- 175 Sec. 9, Art. 19 of the Provisional Constitution.
- 176 Art. 62 of the Law Governing the National Council.
- 177 Art. 63 of the Law Governing the National Council.
- 178 Art. 64 of the Law Governing the National Council.
- 179 General Chang Chêng-wu was one of the heroes of the Wuchang Revolution and a noted member of the T'ung-mêng Hui. Presumably because he was in discord with the Yüan Shih-k'ai administration, he was enticed to Peking and was suddenly seized and shot without trial at midnight on August 15, 1912 after a banquet in his honor. This event aroused an uproar in the National Council. Repeated requests were made that members of the Cabinet should immediately appear in the Council and answer questions. For several days, the government refused to honor the requests. Finally the Minister of Army did appear in the Council. But his answers were vague and his charge against the executed general failed to satisfy the Council. However, the Council found itself in no position to take any further effective step. See Government Gazette,* September 8, 9, 10, 15, and 22, 1912.
- 180 Sec. 10, Art. 19 of the Provisional Constitution.
- 181 Art. 59 of the Law Governing the National Council.
- 182 Art. 61 of the Law Governing the National Council.
- 183 Art. 59 of the Law Governing the National Council.
- 184 Art. 47 of the Provisional Constitution.
- 185 Art. 79 of the Law Governing the National Council.
- 186 Art. 1 of the Law on the Organization of the Parliament; for its Chinese text, see The Government Gazette,* August 11, 1912; and for an English text, see China Year Book, 1914, pp. 465-66.
- 187 Art. 2 of the Law on the Organization of the Parliament.
- 188 Art. 6 of the Law on the Organization of the Parliament, and Arts. 3 and 6 of the Law on the Election of the Senate. For a Chinese text of the latter, see Government Gazette,* August 11, 1912; for an English text, see China Year Book, 1914, pp. 467-70.
- 189 Art. 4 of the Law on the Organization of the Parliament, and the Law on the Election of the House of Representatives. For a Chinese text of the latter, see Government Gazette,* November 9, 1912; for an English text, see China Year Book, 1914, pp. 470-83.
- 190 Art. 7 of the Law on the Organization of the Parliament, and Arts. 5 and 6 of the Law on the Election of the House of Representatives.
- 191 Roughly speaking, male citizens who did not possess a certain amount of property and education or who were not residents of electoral districts for two years were disfranchised in all elections, and all women as well.
- 192 In a big country where there were no adequate communication

facilities such as radio, press, railroads, and the like, it would indeed be difficult for the constituencies to supervise their delegates.

- 193 The Law Governing the Two Houses of the Parliament; for its text, see Government Gazette,* September 28, 1913.
- 194 There were thirteen Standing Committees in the House of Representatives: Legal Affairs, Estimates, Actual Accounts, Foreign Affairs, Domestic Affairs, Finance, Military Affairs, Education, Industry, Communications, Petitions, Discipline of Members, and Investigations. In the Senate there were twelve Standing Committees: Legal Affairs, Finance, Domestic Affairs, Foreign Affairs, Military Affairs, Communications, Education, Industry, Estimates, Actual Accounts, Petitions, and Discipline of Members.
- 195 In May, 1912, the T'ung-i Tang was amalgamated with four other small parties into the Kung-ho Tang. Put some of the former T'ung-i Tang members, including Chang Ping-lin, shortly withdrew from the amalgamated party and revived the T'ung-i Tang. But the revived T'ung-i Tang was also an ally of President Yüan Shih-k'ai.
- 196 The six small parties were as follows: (1) the Hsiang-yu Hui (the Society of Mutual Friends), led by Liu Kuei-i; (2) the Chêng-yu Hui (the Society of Political Friends), led by Ching Yao-yüeh; the Ch'ao-jan Shê (the Impartial Society), led by Kuo Jên-chang; (4) the Kuei-ch'ou T'ung-chih Hui (the Society of the Comrades of 1913), led by Ch'ên Chia-ting; (5) the Chi-i Shê (the Society for Mutual Welfare), led by Chu Chao-hsin; and (6) the Ch'ien Shê (the Latent Society), whose leader was not even known. Generally speaking, the Hsiang-yu Hui and the Chêng-yu Hui were composed of former Kuomintang members who had been enticed by President Yüan to support him in return for political favors. The Kuei-ch'ou T'ung-chih Hui members remained friendly with the Kuomintang after they seceded from the latter. The Chi-i Shê was an organization of some members of the Parliament from Kwangtung Province, whereas the Ch'ao-jan Shê was a group of parliamentarians from Hunan Province. Data are lacking on the identity of the Ch'ien Shê. All of these parties were composed of members of the Parliament only, with membership ranging from about seventy to twenty.
- 197 Notable figures of the revived Kung-ho Tang were Chang Po-lieh, Huang Yün-p'êng, and Wu Tsung-tz'ü. They revived the Kung-ho Tang because they were displeased by the arbitrary and dictatorial attitude of the ex-Min-chu Tang elements, such as Liang Ch'ich'ao, Tang Hua-lung and Lin Ch'ang-min. But the revived Kung-ho Tang was still an ally of Yüan Shih-k'ai.
- 198 The leaders of this party were Chang Yao-tsêng, Ku Chung-hsiu, Shên Chün-ju, Li Kuo-chên, Lan Kung-wu, Ting Shih-i, Wang P'êng-nien, and Liu Ch'ung-yu.
- 199 For an account of the development of political parties in this period, see Yang, Chinese Political Parties,* pp. 66-80.
- 200 Art. 28 of the Provisional Constitution, and Art. 14 of the Law on the Organization of the Parliament.

- 201 Arts. 12 and 13 of the Law on the Organization of the Parliament.
- 202 Art. 14 of the Law on the Organization of the Parliament.
- 203 Art. 54 of the Provisional Constitution, and Arts. 20 and 21 of the Law on the Organization of the Parliament.
- 204 Measures passed by the Parliament were subject to the President's suspensive veto power.
- 205 All the descriptions of the procedures of the Parliament are primarily based on the Law Governing the Two Houses of the Parliament, and other regulations concerning the same. For texts of these regulations, see Commercial Press (compiler), Complete Laws and Ordinances of the Republic of China (1924),* pp. 5-8, 13-18, and 20.
- 206 The Imperial Code on the Organization of the Courts was promulgated in 1911.
- 207 Art. 49 of the Provisional Constitution.
- 208 For an account of the administrative court, see Chapter III.
- 209 China Year Book, 1914, p. 435. It is to be noted that the Courts of First Instance were abolished in 1914 for financial reasons. But Summary Branches were allowed to be set up within Metropolitan Courts. Thus the system of four grades of courts and three trials was practically still preserved.
- 210 Ibid., p. 452.
- 211 Ibid.
- 212 All statements on the legal aspects of the Supreme Court are based on the Provisional Law on the Organization of the Courts; for a text, see Commercial Press, Complete Laws (1924),* pp. 785-91.
- 213 Besides being unfortunate in its presidents, the Supreme Court under the Kuomintang regime was more obscure because there was a Judicial Yüan above it. It was the Judicial Yüan, not the Supreme Court, which was on a par with the other powers of the state, such as the executive, the legislative, the examination, and the control.
- 214 Report of the Commission on Extraterritoriality in China, p. 91.
- 215 As early as 1689, a treaty between Russia and China stipulated that the subjects of either nation guilty of breaches of the frontier should be handed over to their respective officials for punishment. But a more explicit arrangement was later made in 1768 between the same countries.
- 216 Officially, the problem was discussed and argued in the Washington Conference of 1921. It was further studied by an international commission headed by Mr. Silas H. Strawn of the United States. The commission's report has been referred to in footnote 214 above. In addition to these, many other unofficial conferences also took up the subject.
- 217 Upon the conclusion of new treaties between China and several nations including the United States in 1943, extraterritoriality ceased to exist in China.
- 218 The Kung-ho Tang preferred to have such a Cabinet because it feared that if a Cabinet was otherwise organized, then the T'ung-mêng Hui might completely dominate the administration, since it was the largest party in the Council.

- 219 Li, Thirty Years,* pp. 269-71.
- 220 For an account of the murder of Mr. Sung Chiao-jên, see ibid., pp. 275-84.
- 221 The Quintuple Loan (£25,000,000) was borrowed from the Five-Power Consortium in April, 1913, by the Chinese government. The Consortium was originally composed of financial firms of six powers including the United States. It was organized for the purpose of reënforcing the financial monopoly of the group in China. After the establishment of the Republic, many Chinese urged the government to secure loans outside the group in order to get rid of its domination. But when the government could not find the funds needed elsewhere, it was finally compelled to institute negotiations with the members of the Six-Power Consortium for a large administrative loan. After the Chinese government agreed to pledge the revenue of the salt gabelle as the principal security for the loan and to accept foreign advisers in the Board of Audit, the Loan Contract was signed. However, before the conclusion of the contract, the American members of the Consortium withdrew from the group under the pressure of President Wilson, who believed that the loan conditions would unduly impair the administrative integrity of China. See China Year Book, 1914, p. 379-412.
- 222 President Yüan and the Cabinet, however, maintained that the constitutional requirement had been observed since the principle of the government's policy to negotiate a loan with the Consortium had been accepted by the National Council. See Journal of the Senate,* II, (April, 1913), 11-34.
- 223 In discussing the loan, members of the Parliament were alleged to have thrown inkpots or even to have come to blows.
224. The three men were General Li Lieh-chün, Military Governor of Kiangsi; Hu Han-min, Military Governor of Kwangtung; and Po Wên-wei, Military Governor of Anhwei.
- 225 For a text of the Temple of Heaven Draft, see China Year Book, 1914, pp. 490-99; and Pan, Chinese Constitution, pp. 157-69.
- 226 For a discussion of the electoral procedure, see p. 107.
- 227 China Year Book, 1914, p. 549.
- 228 For a Chinese text of the Compact, see Wang and Ch'ien, Comparative Constitutional Law,* II, 357-64; for an English text, see China Year Book, 1916, pp. 437-43; and Pan, Chinese Constitution, pp. 170-78.
- 229 Vinacke, Far East in Modern Times, p. 239.

Chapter III

- 1 The Cabinet's program of political reform was largely drafted by Minister of Justice Liang Ch'i-ch'ao; for an English version of the program, see Hsiung Hsi-ling, The General Policy of the Chinese Government.
- 2 Originally, the Administrative Conference was to be composed of representatives of the various provincial governments only; for the edict calling for the Political Conference, see Government Gazette,* November 27, 1913.

- 3 For the memorial of Vice-President Li and others, see Sun, Materials,* II, 19-21.
- 4 For a text of the Political Conference's reply to the President's "message on the ways and means for the salvation of the nation," see ibid., II, 16-19.
- 5 For a text of the Conference's reply to the President's message concerning the procedure for the amendment of the Provisional Constitution, see ibid., II, 21-24.
- 6 For the text of the Regulations on the Organization of the Constitutional Compact Conference, see Government Gazette,* January 27, 1914.
- 7 Art. 1 of the Regulations on the Organization of the Constitutional Compact Conference.
- 8 Members of the board were selected by the President from the judges and procurators of the Supreme Court, presidents of the universities and colleges and other prominent persons; see Government Gazette,* January 14, 1914.
- 9 Art. 12 of the Regulations on the Organization of the Constitutional Compact Conference.
- 10 Wang and Ch'ien, Comparative Constitutional Law,* II, 154.
- 11 See the Presidential Edict on the Amendment of the Provisional Constitution, Government Gazette,* May 1, 1914.
- 12 For more information about the activities of the conference, see Record of the Constitutional Compact Conference,*.
- 13 Cf. Ch'ien et al., Political System,* I, 73.
- 14 For the election of the President, see p. 107.
- 15 See p. 98.
- 16 Art. 18 of the Constitutional Compact.
- 17 Art. 34 of the Constitutional Compact.
- 18 Arts. 21 and 34 of the Constitutional Compact.
- 19 Art. 19 of the Constitutional Compact.
- 20 Art. 23 of the Constitutional Compact.
- 21 Arts. 21 and 24 of the Constitutional Compact.
- 22 Art. 22 of the Constitutional Compact.
- 23 Art. 25 of the Constitutional Compact.
- 24 Art. 54 of the Constitutional Compact.
- 25 Art. 52 of the Constitutional Compact.
- 26 Art. 53 of the Constitutional Compact.
- 27 Art. 56 of the Constitutional Compact.
- 28 Art. 55 of the Constitutional Compact.
- 29 Cash contributions from the provinces had been one of the main revenues of the imperial government in Peking. But after the outbreak of the Revolution in 1911, the provinces ceased sending money to the central government of the Republic for almost three years.
- 30 The provinces continued to make cash contributions to the central government until 1917. In 1918 the provinces stopped, though several provinces still took the burden of financing the armies and other agencies of the central government stationed in their territories. See Chia Shih-I, A History of Public Finance under the Republic,* I, 52-60 and 70-75; and Yang Ju-mei, Finance

of the Chinese Republic,* pp. 30-34.

- 31 The five taxes were: title deed tax, stamp tax, tobacco and wine tax, tobacco and wine license tax, and broker's license tax. See Yang Ju-mei, Finance,* p. 34.
- 32 The four taxes were: butchery tax, land surtax, likin surtax, and livestock tax. See ibid.
- 33 Ibid., p. 17; and China Year Book, 1916, p. 322.
- 34 Arts. 27 and 28 of the Constitutional Compact.
- 35 Art. 27 of the Constitutional Compact.
- 36 Art. 26 of the Constitutional Compact.
- 37 For a text of this law, see Government Gazette,* December 6, 1912.
- 38 Art. 20 of the Constitutional Compact.
- 39 Art. 30 of the Constitutional Compact.
- 40 See Government Gazette,* May 1, 1914.
- 41 On the day (May 1, 1914) when the Compact was promulgated, Hsü Shih-ch'ang was appointed Secretary of State, and other ministers of the various departments were also recommissioned.
- 42 See the presidential Edict on the Organization of the Board of Political Affairs, Government Gazette,* May 4, 1914.
- 43 All the statements made here concerning the position of the Secretary of State are based upon the materials contained in Huang, Huang Yüan-shêng,* IV, 32-38, and 41-45.
- 44 Under the Manchu Dynasty, Mr. Hsü was the holder of many high government posts, including Grand Guardian of the Emperor, Chief of General Staff, Vice-President of the Privy Council, Vice-Premier, Grand Councilor, and Viceroy of Manchuria.
- 45 Huang, Huang Yüan-shêng,* IV, 37.
- 46 For the organizations and functions of these bureaus, see Government Gazette,* May 6, 9, and 18, 1914.
- 47 The President usually held the so-called "meetings on public finance" at the Bureau of Budget and Statistics. The meeting, composed of the Minister and deputy-ministers of Finance, the presidents of the Banks of China and Communications, and the Director of the Bureau of Budget and Statistics, was presided over by the President, and financial policies were discussed there.
- 48 For the presidential Edict on the Organization of the Office of the Commander-in-Chief of the Army and Navy, see Government Gazette,* May 9, 1914.
The official system of the various departments was amended by a presidential edict on July 10, 1914, see ibid., July 11, 1914.
- 50 For a text of this document, see ibid., May 11, 1914. It may be noted here that Nagao Ariga, a Japanese adviser to President Yüan, exercised great influence on the enactment of this document by writing an article entitled "On the Composition and Functions of a High Advisory Council."
- 51 With the formation of the Council of State, the Political Conference, which had first met on December 28, 1913, had fulfilled its functions as an intermediate advisory body until such time as its place could be taken by the Council of State. The conference held its last meeting on June 5, 1914, when it was dissolved, many of

- its members finding seats in the Council of State.
- 52 According to the Compact, besides having the power to appoint a committee to draft the nation's permanent constitution, and to examine and pass the same, the Council's consent to the following matters was required: (1) the dissolution of the Legislative Assembly by the President; (2) the issuance of emergency ordinances having the force of law while the Legislative Assembly was not in session; (3) the making of urgent financial appropriations by the President also while the Legislative Assembly was not in session; and (4) the withholding of the promulgation of laws for which the Legislative Assembly had overridden the President's veto.
 - 53 In his edict of June 29, 1914, the President did not give any reason for failure to organize the Assembly. See Government Gazette,* June 30, 1914. Although laws on the organization of the Legislative Assembly and the election of its members were subsequently promulgated on October 27, 1914, no step was taken to carry out these laws. Presumably, President Yüan had no intention to set it up in the first place.
 - 54 See Hsieh, Legislation,* pp. 116-19.
 - 55 For texts of these laws, see Government Gazette,* October 28, 1914.
 - 56 See Arts. 1 to 9 of the Law on the Election of Members of the Legislative Assembly.
 - 57 Art. 31 of the Constitutional Compact.
 - 58 For a text of the Law on the Organization of the Board of Audit, see Government Gazette,* June 17, 1914.
 - 59 Each section also had a chief and four subdivisions. The chiefs were selected by the President of the Republic from among the auditors and were appointed as such by the same.
 - 60 All the statements on the audit system are based upon the Law on Government Auditing; for its text, see Commercial Press, Complete Laws (1924),* p. 549.
 - 61 Art. 49 of the Provisional Constitution.
 - 62 Art. 45 of the Constitutional Compact.
 - 63 For a text of the Law on the Organization of the Administrative Court, see Government Gazette,* April 1, 1914; and for texts of the other related laws, see *ibid.*, July 21, 1914.
 - 64 Cf. Liang J'en Kié, Étude sur la juridiction administrative en Chine; and Chien, Government and Politics, pp. 257-58.
 - 65 See Arts. 1, 12, and 13 of the Law Governing Administrative Appeals. For its text, see Government Gazette,* July 21, 1914.
 - 66 Art. 5 of the Law on the Execution of Administrative Adjudication; for its text, see *ibid.*, July 21, 1914.
 - 67 See the Regulations on the Execution of the Decisions of the Administrative Court; for its text, see *ibid.*, June 9, 1914.
 - 68 Art. 34 of the Law Governing Administrative Appeals.
 - 69 Although *ad hoc* chambers might be instituted in local areas where cases awaited hearing, this could not be done unless complaints had been brought to the Court in Peking by the petitioners.
 - 70 See the Report of the Commission on Extraterritoriality in China, pp. 82-83.

- 71 Arts. 13 and 14 of the Law on the Organization of the Administrative Court.
- 72 Art. 21 of the Law on the Organization of the Administrative Court.
- 73 Art. 12 of the Law on the Organization of the Administrative Court.
- 74 For a concise account of the old Chinese Censorial system, see Kao I-han, A History of the Chinese Censorship.*
- 75 Chien, Government and Politics, pp. 262-63.
- 76 See Li, Thirty Years,* p. 325; and Pai Chiao, Yüan Shih-k'ai and the Chinese Republic,* pp. 244-45.
- 77 See Art. 1 of the Law on Censorial Procedures; for its text, see Government Gazette,* July 21, 1914.
- 78 See the presidential Edict on the Execution of Censorial Measures; for its text, see ibid., July 21, 1914.
- 79 See above, p. 80.
- 80 For a text of the revised Presidential Election Law, see Government Gazette,* December 30, 1914; and China Year Book, 1916, pp. 434-35.
- 81 For a text of the original Presidential Election Law, see Government Gazette,* October 6, 1913; and China Year Book, 1914, pp. 494-95.
- 82 This was possible due to the ways through which members of the two institutions got their offices; see above pp. 96 and 98.
- 83 Chou and Lo, Constitutional Government,* p. 119.
- 84 See Li, Thirty Years,* pp. 319-20.
- 85 For an account of the Twenty-one Demands, see Weale, Fight for the Republic, pp. 88-144.
- 86 Ibid., p. 146.
- 87 Ibid., p. 186; and Li, Thirty Years,* p. 321.
- 88 Pai, Yüan Shih-k'ai,* p. 162.
- 89 For an English text of the article, see Weale, Fight for the Republic, pp. 175-85; and Bau, Modern Democracy in China, pp. 413-23.
- 90 It is to be noted that some American works on Chinese politics have erred in stating that the Society was formed earlier than the publication of Dr. Goodnow's article. See Vinacke, Constitutional Development, p. 183; and Weale, Fight for the Republic, pp. 173-75.
For a Chinese text of the message, see Pai, Yüan Shih-k'ai,* pp. 256-58 (translation mine).
- 92 For a text of the message, see Government Gazette,* September 26, 1915 (translation mine).
- 93 For a text of the message, see Government Gazette,* September 26, 1915.
- 94 See China Year Book, 1916, p. 483.
- 95 For a Chinese text of this Law, see Government Gazette,* October 9, 1915; and for its English version, see China Year Book, 1916, pp. 444-46.
- 96 Vinacke, Constitutional Development, p. 189.
- 97 See Government Gazette,* December 12, 1915.
- 98 See Chang, Foreign Relations,* I, 254, and Wang, Yün-shêng, Sino-Japanese Relations During the Last Sixty Years,* VII, 8-10.

- 99 Chang, Foreign Relations,* I, 254-255. It is perhaps relevant to note at this juncture that Yüan Shih-k'ai apparently did not expect serious interference by the Western Powers with his monarchical design, as most of them were deeply involved in World War I. But when it became quite clear that Yüan's monarchical movement was going to cause internal dissension in China that might, in turn, create a situation endangering their established interests there, Great Britain, Russia and France joined Japan in serving on Yüan a notice of warning. The reason for Japan's change of her attitude toward Yüan's monarchical movement late in 1915 is quite difficult to ascertain. But some Chinese believed that it was because Japan did not want to further antagonize the anti-Yüan elements in China after she had found out that there was little chance for Yüan's monarchical movement to succeed. See Li, Thirty Years,* pp. 341-44.
- 100 Wang, Sino-Japanese Relations,* VII, 12-14.
- 101 Ibid., VII, 19-20.
- 102 Weale, Fight for the Republic, pp. 220-35.
- 103 For a text of Yüan's decree, see Government Gazette,* December 12, 1915.
- 104 For Yüan's decree, see ibid., December 13, 1915.
- 105 For Yüan's decree on this matter, see ibid., December 15, 1915.
- 106 For Yüan's decree on this matter, see ibid., December 17, 1915.
- 107 For Yüan's decree on this matter, see ibid., December 17, 1915.
- 108 See ibid., December 17, 1915.
- 109 From December 1, 1915 such memorials already appeared in ibid.
- 110 See ibid., December 20, 1915.
- 111 See ibid., December 26, 1915.
- 112 See ibid., December 16, 1915.
- 113 See ibid., December 21, 1915.
- 114 See ibid., December 22, 23, and 25, 1915.
- 115 It is to be noted that Mr. Liang had been one of the 1898 reformers. He had stood for constitutional monarchy until the establishment of the Republic. He had also supported President Yüan in the overthrow of the Parliament and the establishment of the dictatorship. He, therefore, could not be accused of undue radicalism or of extreme partisanship.
- 116 For a Chinese text of the pamphlet, see Pai, Yüan Shih-k'ai,* pp. 215-30; for its English text, see Weale, Fight for the Republic, pp. 192-215. In brief, his argument was that the time for unsettling the country by a change in the form of the state had passed; that the Republic should be accepted as a fact; that every effort should be bent toward a reorganization of the government so as to restore peace and order and give an effective administration. Moreover, Yüan Shih-k'ai had been given a term of office long enough to enable him to accomplish this task, and if ten years were not sufficient, his term could be extended for another ten-year period.
- 117 The Chinese Revolutionary Party was the successor to the ex-

Kuomintang, which was disbanded by President Yüan in 1913. The new party was organized by Sun Yat-sen and the uncompromising elements of the old party in June, 1914, in Tokyo. For an account of its formation and activities, see Chou, Draft History of the Kuo-mintang,* I, 163-320; and Yang, Chinese Political Parties,* pp. 84-89.

- 118 Ts'ai Ao was one of the young Chinese who, after studying military science in Japan, played an important part in the Revolution of 1911. He had been Military Governor of Yunnan Province from the establishment of the Republic. After President Yüan found him to be an unusually able leader, he induced him to lay down his office in Yunnan and join him in the capital at the beginning of 1914, in conformity with his policy of bringing to Peking all who might challenge his authority. After the commencement of the monarchical movement, Ts'ai Ao soon became an open suspect owing to his intimate connection with Liang Ch'i-ch'ao, the author of the pamphlet opposing the movement. In order to lessen the suspicion, he had taken the bold step of leading the list of generals in residence in Peking who petitioned the Council of State to institute a monarchy. Later he escaped from the capital and was next heard from in Yunnan.
- 119 Peking Gazette, March 12, 1916.
- 120 For the presidential edict on this matter, see Government Gazette,* December 30, 1915.
- 121 See ibid., February 26, 1916.
- 122 See ibid., March 1, 1916.
- 123 Li, Thirty Years,* p. 355.
- 124 See Government Gazette,* March 23, 1916; and Weale, op cit., pp. 258-62.
- 125 The Confederacy (Hu-kuo-chün Chêng-fu) was formally organized on May 1. It issued a manifesto declaring that Yüan Shih-k'ai had ceased to be the President of the Republic when he accepted the throne, and that Vice-President Li Yüan-hung should succeed him. But since Li was unable to exercise his authority for the time being, a Military Council (Chün-wu Yüan), consisting of the leaders of the anti-monarchical movement, was temporarily to take care of the military and political affairs of the nation. Subsequently, it published a list of the members of the Council, in which the names of T'ang Ch'i-yao, Liu Hsien-shih, Lu Jung-t'ing, Lung Chi-kuang, Lü Kung-wang, T'sên Ch'ung-hsüan, Liang Ch'i-ch'ao, Ts'ai Ao, Li Lieh-chün, Ch'ên Ping-kung, Tai Chi, and Lo P'ei-chin appeared. The nominal military heads were T'ang Ch'i-yao and Ts'ên Ch'ung-hsüan, and the Chief Political Commissioner was Liang Ch'i-ch'ao.
- 126 Chekiang declared its independence on April 12.
- 127 The famous Nanking Conference was actually not convoked until the middle of May. But General Fêng Kuo-chang's views on the issues had been well-known before that. Throughout the period, it was known that he desired to substitute his own for Yüan Shih-k'ai's control of the country by being a mediator.

- 128 For its edict, see Government Gazette,* April 22, 1916.
- 129 Translation mine.
- 130 See the same edict.
- 131 See Government Gazette* of the same date.
- 132 During the monarchical movement, General Tuan went to Shansi Province in order to dissociate himself with the monarchists.
- 133 Li, Thirty Years,* p. 360.
- 134 Szechuan declared its independence on May 22, and Hunan on May 29. It is to be noted that the military governors of these two provinces had been Yüan's most trusted lieutenants. Besides, Shensi also declared its independence on May 9, but shortly voluntarily cancelled its action after the death of Yüan.
- 135 Leaders of the Confederacy were never completely in agreement. See Li, Thirty Years,* p. 370.
- 136 P. S. Reinsch, An American Diplomat in China, p. 192.
- 137 For an English version of the edict, see Weale, Fight for the Republic, pp. 267-68; and Vinacke, Constitutional Development, pp. 209-11.

Chapter IV

- 1 See footnote 125 of Chapter III.
- 2 See Tuan's circular telegram on the subject which appears in Government Gazette,* June 24, 1916.
- 3 For its edict, see ibid., June 30, 1916.
- 4 On the same day, edicts were issued to the effect that the Office of the Commander-in-Chief of the Army and Navy, the Council of State, and the Censorial Office were abolished.
- 5 Originally, the leaders of the Confederacy were of the opinion that until a new Cabinet had been confirmed by the reconvened Parliament in Peking, the Confederacy should not announce its own disbandment. But General T'ang Chi-yao, on July 4, acting upon the secret recommendation of Liang Ch'i-ch'ao, suddenly announced the disbandment of the Confederacy before even the Parliament itself was reconvened. Although the rest of the Confederacy leaders, which consisted of elements of both the Chin-pu Tang and the Chinese Revolutionary Party, did not openly and immediately denounce Mr. Liang's action, they hereafter regarded him as an intriguer. This unhappy incident subsequently proved to be the beginning of the disunion between the two parties which had co-operated with each other in the anti-monarchical movement.
- 6 P. M. A. Linebarger, Government in Republican China, p. 114.
- 7 For an account of the Pei-yang military faction, see Wu, Pei-yang Military Faction.*
- 8 As Mr. Vinacke has pointed out, there were two principal reasons for the interest shown in controlling Peking even though the central government, as such, had little or no actual authority in the country. The first was that those who controlled the capital had control of such national administrative machinery as continued to exist and had a basis for claiming the allegiance of the country.

The second, and possibly more important reason was that internationally the Peking government continued to be dealt with by the foreign governments as if it were the government of China. Thus it could assert a claim to any surplus from the customs collections and the salt gabelle, after loan and indemnity charges defrayed from these sources had been met. And foreign loans could be contracted, if at all, most advantageously through the medium of the "government" of China. See Vinacke, Far East in Modern Times, p. 249.

- 9 It is to be noted that the North did not regard the Provisional Constitution as in suspension after Fêng Kuo-chang became President. They still claimed that it was the fundamental law of the land, although they repudiated the old Parliament by substituting a new one which was elected in accordance with a new set of electoral laws.
- 10 Because members of the Parliament who went to Canton were too few to constitute a quorum, substitutes were admitted to the sessions.
- 11 When General Ts'ao K'un's followers planned to use bribery in securing Ts'ao's election, more than two hundred members of the Parliament denounced the action and left Peking for Shanghai, attempting to assemble there. But Ts'ao's followers were able to induce a number of the absent members of Parliament to return to Peking, and to elect Ts'ao.
- 12 Generally speaking, after the restoration of the old Parliament in 1916, the members of the former Kuomintang attempted to support President Li in the hope that Premier Tuan would be somewhat checked thereby. In Premier Tuan's Cabinet, which consisted of Tuan's own friends and members of the former Kuomintang and the Chin-pu Tang, the Kuomintang members also tended to maintain a close relation with the President. But since Premier Tuan was the dominating figure in the government, President Li was still unable to challenge his position.
- 13 Li, Thirty Years,* p. 397.
- 14 Ibid., pp. 297-98 (translation mine).
- 15 When President Li refused to approve the policy of severing diplomatic relations with Germany, Premier Tuan tendered his resignation and left Peking for Tientsin. The President yielded, and asked General Fêng Kuo-chang to urge Tuan to resume his office.
- 16 Late in April, 1917, Premier Tuan summoned the various military governors to Peking to advise him on the government's policy toward Germany. The military governors unanimously were in favor of war without waiting for concessions from the Entente. When the war bill was submitted to Parliament, there were many signs that the government would have a sufficient majority to insure its passage. But as the military governors wanted to be absolutely certain that the bill would be passed, they imitated Yüan Shih-k'ai's coercive methods by employing mobs to urge the declaration of war upon Germany while the House of Representatives was considering the bill. As a result, the members of Parliament

became angry and refused to take any action on the war bill until a new Cabinet was constituted. However, a number of the pro-Tuan members of Parliament (all were members of the "Constitution-Research Society"), who had been defeated previously in the Parliament on certain issues over the drafting of the permanent Constitution by the pro-Li group, took this opportunity to urge that the military governors ask for the dissolution of the Parliament. This was done immediately by the military governors. Instead of accepting the advice of the military governors to dissolve the Parliament, President Li dismissed Premier Tuan on May 23, and the edict dismissing Tuan was countersigned by Wu T'ing-fang, Foreign Minister in Premier Tuan's Cabinet.

- 17 The eight military governors were: Ni Szŭ-ch'ung of Anhwei, Chang Tso-lin of Fêngtien, Chang Huai-chi of Shantung, Li Hou-chi of Fukien, Chao T'í of Honan, Yang Shan-tê of Chekiang, Ch'ên Shu-fan of Shensi, and Ts'ao K'un of Chihli. All of them were members of the Pei-yang military faction. It is to be noted that General Fêng Kuo-chang of Kiangsu and his two close followers, General Li Shun of Kiangsi and General Wang Chan-yüan of Hupei, did not join the rebellion. This fact later turned out to be a sign of the split within the Pei-yang military faction.
- 18 Li Ching-hsi was an Anhwei man and a nephew of the famous Li Hung-chang. He had held various high positions under the Manchu Dynasty, such as Governor-General of the Yun-Kwei Provinces and Governor of Kiangsi. Li was also an intimate friend of Yüan Shih-k'ai, and served under him as chairman of the Political Conference in 1913-14 and member of the Council of State in 1914-16. When Yüan was going to ascend the throne, Li was also honored as one of the "Four Friends of Sung-shan." Thus politically Li must be classed as a conservative politician in close relation with the Pei-yang military faction.
- 19 At first, President Li refused to dissolve the Parliament on the ground that the Provisional Constitution did not provide for such power. But eventually he yielded.
- 20 On his way to Peking from Hsüchow, Chang Hsün deliberately stopped in Tiensin to get the views of the leaders there, including Tuan Ch'í-jui, before going to Peking to take up his work of mediation. It was revealed after the failure of the restoration of the Manchu Dynasty, that though Tuan Ch'í-jui did not definitely approve Chang's plan of restoring the monarchy while Chang was talking with him in Tientsin, he at least made no attempt to oppose it. Thus, many believe that the restoration of monarchy by Chang was actually a maneuver on the part of Tuan Ch'í-jui, who wanted to create a situation where he could resume power and do away with President Li Yüan-hung and the old Parliament. See Li, Thirty Years,* p. 407; and Wu Ch'iu, Pei-yang Military Faction,* p. 26.
- 21 After Premier Tuan returned to Peking on July 14, he told President Li that he should retire from public life forever. This certainly amounts to forced resignation.
- 22 For the failure of Premier Tuan to restore the old Parliament in

1917, see a later section of this book dealing with the legislature. As to the "Constitution-Protecting Government" in Canton, it may be summarily stated that it had made efforts to assert itself as the de jure government of China, and had nominally extended its jurisdiction over Kwangtung, Kwangsi, Yunnan, Kweichow, and Szechuan and parts of the other Southern provinces, but internal friction prevented it from doing anything conspicuous. At times the regime was under the control of Sun Yat-sen, and at other times it was under that of the military leaders of the South who were not his followers. The regime, which kept changing its name, was terminated in 1921 when the old Parliament was restored in Peking by Wu P'ei-fu.

- 23 Tuan Ch'i-jui resigned his post on November 22, 1917, when his forces in the South suffered setbacks and President Fêng's military followers in Central China sent out a circular telegram calling for a peaceful settlement with the South.
- 24 Tuan Ch'i-jui was reinstated as Premier on March 23, 1918, when the South refused to make peace with the Government in Peking, and when General Chang Tso-lin of Manchuria moved a large force into Chihli, the province in which Peking is located, and announced his intention of going to the aid of Tuan Ch'i-jui in his war policy with the South.
- 25 Before he would consent to leave Nanking, he insisted that General Li Shun be made Military Governor of Kiangsu, and General Ch'ên Kuang-yüan retain the military governorship of Hupei.
- 26 It is to be remembered that originally President Fêng was to serve in the office for the remaining period of the term of five years left by Yüan Shih-k'ai and Li Yüan-hung. Thus Fêng could stay in the office for only about one year.
- 27 The "War Participation Bureau" was created after China had declared war on Germany in 1917. It soon became a powerful agency in the government through its administration of the financial and military aid given China by Japan in the name of common belligerency against Germany.
- 28 The Chiao-t'ung (Bank of Communications faction) in the new Parliament advocated a peaceful settlement with the South, so its members preferred Hsü Shih-ch'ang as President.
- 29 Tuan Ch'i-jui and his followers well knew that since Hsü was without a military following of his own, when he became President, it would not be difficult for them to make use of him for their purposes so long as they controlled the new Parliament and the War Participation Bureau.
- 30 It was commonly believed that Hsü Shih-ch'ang's unwillingness to endanger his presidential chair was one of the numerous factors which prevented the reconciliation between the North and the South from taking place. Cf. Li, *Thirty Years*,* pp. 449-50.
- 31 The formation of Liang Shih-i's Cabinet in December, 1921, was a good illustration of the ascendancy of the Fêngtien clique.
- 32 Chien, Government and Politics, pp. 67-68.
- 33 Wu P'ei-fu was particularly antagonized by the government's action

- of granting special pardons to several noted figures of the ex-Anhwei clique, which had been outlawed since 1920 at his request, and by its failure to finance Wu's troops.
- 34 Since Hsü was elected by the new Parliament of 1918, the restoration of the old Parliament would naturally nullify Hsü's election.
- 35 The declared objective of the regime in the South had been to secure the revival of the old Parliament and the reinstatement of President Li.
- 36 Li, Thirty Years,* p. 501.
- 37 Before Li agreed to being reinstated as President, he dispatched a circular telegram calling for these two things as prerequisites; for a text of the telegram, see Liu Ch'u-hsiang, The Coup d'état of 1923,* pp. 12-15.
- 38 Actually there was a legal problem as to how long Li should serve in the presidency, since his reinstatement was treated not as a separate term but as a continuation of Yüan Shih-k'ai's unfinished term, which, in turn, of course, had been served for certain periods by Li himself previously, and by Fêng Kuo-chang.
- 39 Liu, Coup d'état of 1923,* p. 32; and Chang Hsiung, The Cabinet of the Chinese Republic* p. 49.
- 40 Actually President Li previously had called Premier Chang Shao-ts'eng and several other high officials concerned to his office and had secured their consent for the authorization of the use of the fund for financing the Parliament. But later on, the pro-Ts'ao K'un faction in the Cabinet protested Li's action as an interference with function of the Cabinet and they urged the whole Cabinet to resign. Thus Li was embarrassed.
- 41 Li, Thirty Years,* pp. 525-27.
- 42 It is to be noted that General Wu P'ei-fu, junior leader of the Chihli military clique, was, at the time, in favor of adopting the permanent Constitution before electing a new president. He further was against the use of inappropriate methods to get his senior elected. But in spite of this, he never took positive action to stop the "General-Ts'ao-for-President Movement." Cf. Tao Chü-yin, A Biography of General Wu P'ei-fu,* pp. 78-87.
- 43 It has been reported that each of those members of Parliament who participated in the election was given a check for \$5,000 by General Ts'ao K'un's agent.
- 44 For a brief account of the so-called "Ts'ao K'un Constitution," see pp. 146-47.
- 45 Since the spring of 1923, Sun had called himself Generalissimo of the Military Government of China. The regime subsequently became the forerunner of the National Government under the Kuomintang's political tutelage.
- 46 China Year Book, 1926, p. 1225.
- 47 General Fêng Yü-siang's defection from Wu P'ei-fu was primarily caused by personal animosity. While Fêng was one of the pillars of the Chihli military clique, he was never given a post with a special dominion. Moreover, his strong personality was also always in danger of arousing antipathy on the part of Wu P'ei-fu.

This made it possible for Sun Yat-sen's and Chang Tso-lin's agents to sow dissension between Fêng and Wu.

- 48 The ministers who belonged to the "Constitutional Research Society," such as Liang Ch'i-ch'ao, T'ang Hua-lung, and Lin Ch'ang-min, were in favor of associating with the Western Powers, whereas Ts'ao Ju-lin, leader of the "Chiao-t'ung Clique," insisted upon a close coöperation with Japan. See Li, Thirty Years,* p. 426.
- 49 Acting Premier Kung wanted the matter to be first approved by the legislature, whereas the Minister of Army demanded that a presidential edict should be immediately issued to the effect that the loan could be floated at once.
- 50 The An-fu Club was organized by the followers of Tuan Ch'i-jui in March, 1918, when the new Parliament was about to be elected. For Premier Chin's difficulties with his colleagues, see Chia I-chün, History of the Politics of the Chinese Republic,* I, 155;
- 51 For a short account of the Chiao-t'ung Clique, see p. 143.
- 52 Chia, Politics of the Chinese Republic,* I, 232; Li, Thirty Years,* pp. 478-79; and Chang Hsiung, Cabinet,* p. 45.
- 53 Chia, Politics of the Chinese Republic,* I, 342.
- 54 In May, 1921, Premier Chin Yün-p'êng, in order to get rid of three colleagues who were in discord with him, resigned with the whole Cabinet and immediately formed a new Cabinet without those three persons.
- 55 In July, 1924, Premier Sun Pao-ch'i himself resigned when he found out that President Ts'ao K'un was in alliance with his opponent, Minister of Finance Wang K'o-min.
- 56 It is by no means true that a Cabinet was entirely free from the legislature at this time, rather it was true that the Parliament scarcely acted in the spirit of an independent entity.
- 57 Vinacke, Constitutional Development, pp. 218-19.
- 58 Ibid.
- 59 At first there were three cliques: the K'o-lu clique, headed by Chang Chi, Ku Ch'ung-hsiu, and Chang Yao-tsêng; the Ping-ch'ên clique, headed by Lin Sên and others; and the T'ao-yüan clique, headed by several ex-Chin-pu Tang adherents such as Sun Hung-i and Ting Shih-i. (All the cliques were named after the buildings housing their headquarters, so that no English translation is possible.) Generally speaking, the K'o-lu clique derived its membership from the moderate wing of the Constitution-Discussion Society, which was more willing to do business with Premier Tuan Ch'i-jui. Indeed, some of its members even served in Tuan's Cabinet. The Ping-ch'ên clique represented the radical wing of the same society and was, therefore, a bitter foe of Premier Tuan. The T'ao-yüan clique cast its lot with President Li Yüan-hung. Later on, these three cliques were split into four factions: the Chêng-hsüeh Hui (the Political Study Society); the I-yu Shê (the Society of Beneficial Friends); the Min-yu Shê (the Society of People's Friends); and the Chêng-yü Chü-lo Pu (the Club of Political Friends). This further split was mainly caused by the issue over whether China should declare war on Germany. Prior to Premier

- Tuan's utilization of mob demonstrations against the Parliament on May 10, 1917, in support of his war bill, the Chêng-hsüeh Hui and the I-yu Shê were in favor of the bill, whereas the Min-yu Shê and the Chêng-yü Chü-lo Pu were against it. See Yang, Chinese Political Parties,* pp. 89-91.
- 60 Ibid., pp. 91-92.
- 61 For an account of these groups, see ibid., pp. 92-93.
- 62 That is to say that the electoral procedures of the old National Council of 1912 were applied to the new one.
- 63 For an account of "the Constitution-Protecting Government," see above, footnote 22.
- 64 For the laws on the organization of the new Parliament, see Government Gazette,* February 18, 1918.
- 65 The senators were no longer elected by the provincial assemblies, but by the central and local electoral colleges.
- 66 The five provinces were: Kwangtung, Kwangsi, Yunnan, Kweichow, and Szechuan.
- 67 Generally speaking, the An-fu Club supported General Tuan's policies toward the South and Germany.
- 68 The Military Governors were as follows: (1) Lu Yung-hsiang of Chekiang, (2) Ch'ên Kuang-yüan of Kiangsi, (3) Wang Chan-yüan of Hupei, and Li Hou-chi of Fukien.
- 69 For an account of the restoration of the old Parliament and the reinstatement of President Li Yüan-hung, see above, pp. 120-21.
- 70 Hsieh, Legislation,* pp. 178-81; and Yang, Chinese Political Parties,* pp. 120-24.
- 71 A few individuals of these groups also left Peking and refused to participate in the election.
- 72 For its Chinese text, see Wang and Ch'ien, Comparative Constitutional Law,* II, 264-79; and Chou and Lo, Constitutional Government,* pp. 283-95. For its English version, see Pan, Chinese Constitution, pp. 191-209.
- 73 Li, Thirty Years,* pp. 462-63.
- 74 The notable example was Hsiung Hsi-ling, former Premier under Yüan Shih-k'ai and one of the leaders of the Chin-pu Tang, see ibid., p. 465.
- 75 Li Chien-nung's two articles in the Pacific Magazine* were the most comprehensive and influential ones. See ibid.
- 76 For the Manifesto, see Chou, Draft History of the Kuomintang,* I, 377-88; and Li, Thirty Years,* pp. 556-67.
- 77 For instance, generals like Chang Tso-lin, Ts'ao K'un, and later Wu P'ei-fu and Wang Chan-yüan were the supermilitary governors. They were so called because of their assumption of the title of "High Inspecting Commissioner" over various provinces adjoining their own.

Chapter V

- 1 See above p. 133.
- 2 General Fêng's own forces, together with those which had turned

against Wu P'ei-fu or had surrendered, were formed in several armies, known as the Kuo-min Chün or People's Army, shortly after Fêng's return in 1924 to Peking from the front.

- 3 The telegrams were sent by Ch'i Hsieh-yüan, Hsiao Yao-nan, Sun Ch'uan-fang, Chou Ying-jên, Ts'ai Chêng-hsü, Ma Lien-chia, Liu Chên-hua, Li Chi-chên, and Tu Hsi-kuei on November 11, 13, and 19. It is to be noted that during the conflict between the Manchurian and the Chihli military cliques, these generals had declared their intention of aiding General Wu P'ei-fu. When the latter was quickly defeated by the combined forces of Chang Tso-lin and Fêng Yü-hsiang, they found themselves in a very delicate position. If they paid tribute to the regime set up by Chang and Fêng in Peking, they would lose face and would be criticized as being disloyal to their former leaders, Ts'ao K'un and Wu P'ei-fu; if they decided to defy the new regime, they might incur defeat and lose their present dominions, since they were not sure about their fighting capacity. To avoid these embarrassments, supporting Tuan Ch'i-jui appeared, they thought, to be the best policy, since after all Tuan had been a senior leader of the former Pei-yang faction to which all of them owed allegiance, and as such he even might bring about conciliation between them and the factions of Chang and Fêng.
- 4 For the text of the instrument, see Government Gazette,* November 25, 1924.
- 5 This was effected by an amendment to the Articles on the Organization of the Government of the Provisional Chief Executive on December 26, 1925. For the text of the amended articles, see ibid., December 27, 1925. The amendment was made because Tuan Ch'i-jui wanted to establish closer relations with Fêng Yü-hsiang after the withdrawal of General Chang Tso-lin's forces from China proper early in December due to the revolt of General Kuo Sung-ling, one of General Chang's trusted lieutenants. It is to be noted that prior to this event, Tuan Ch'i-jui had primarily relied upon the backing of General Chang and had somewhat undermined General Fêng and the Kuomintang.
- 6 For the laws concerning the Council, see ibid., April 14, May 2 and 4, 1925.
- 7 The total membership of the Council was 193.
- 8 Ordinarily, the quorum of the Council was constituted by a majority of its actual membership.
- 9 When Tuan Ch'i-jui was making this arrangement with the foreign legations in Peking, Sun Yat-sen arrived in Tientsin and was taken ill there. In talking with the personal representatives of Tuan Ch'i-jui, Sun indignantly told them that since the Provisional Chief Executive wanted to uphold the unequal treaties while he himself was determined to seek for their termination, it would serve no useful purpose to invite him to Peking. Though the coöperation between the Kuomintang and the government in Peking was already doomed at this stage, Sun Yat-sen still proceeded to Peking on December 31 in the hope that he might eventually convince the

- militarists to adopt his principles for the salvation of the nation. But he died on March 12, 1925, in the capital before achieving anything of the sort.
- 10 With regard to the composition of the "Reconstruction Conference," Sun Yat-sen insisted that it should include the representatives of the various professional and business groups in which the Kuomintang was active and influential; whereas, on the other hand, the government in Peking was in favor of the delegates being appointed by the central government, the military and civil authorities of the provinces, and the leading generals of those armies which had fought against the Chihli military clique. When the Government failed to take any compromising step of a substantial nature in this matter, Sun Yat-sen declared on behalf of the Kuomintang that his party would not participate in the "Reconstruction Conference" and that the latter body was unfit for the task of preparing for the convocation of a Convention of the People's Representatives. See Li, Thirty Years,* pp. 596-99.
 - 11 China Year Book, 1926, pp. 1022-23.
 - 12 The device of a Regency Cabinet was employed in order to sustain the fiction of constitutional continuity.
 - 13 Chia, Politics of the Chinese Republic,* II, pp. 51-60.
 - 14 For the Chinese text of the Mandate, see Government Gazette,* June 19, 1927; and for its English version, see China Year Book, 1928, p. 1223.
 - 15 The Ministry combined the former Board of the General Staff, Departments of Army and Navy, and Aeronautical Bureau all in one.
 - 16 The function of this new organ was earlier taken care of by the Department of Agriculture and Commerce.
 - 17 See the Mandate on the Official System of the Cabinet; for its text, see Government Gazette,* July 13, 1927.
 - 18 For an account of the assassination of Chang Tso-lin, see P. S. Dull, "The Assassination of Chang Tso-lin," Far Eastern Quarterly, XI (August, 1952), 453-63.
 - 19 After that time, the central government of China was seated in Nanking.

Chapter VI

- 1 Liang Chi-chao, History of Chinese Political Thought During the Early Tsin Period, pp. 8-9.
- 2 Ibid., p. 10.
- 3 James Bryce, Modern Democracies, I, 70.
- 4 According to the latest official figures, at the end of 1945, 198,695,066 of China's estimated 373,905,966 persons of or above school age had received the basic course of learning. This left 175,209,934 to be given some form of schooling. In other words, about 53.1% of the persons of or above school age were literate in 1945. The term "literate" included all those who had been enrolled in schools at one time or another regardless of the length of attendance. The percentage of literates given by the present author

- is a conservative estimate of his own. For the official estimate in 1945, see China Hand Book, 1950, p. 639.
- 5 Bryce, Modern Democracies, pp. 131-33.
 - 6 H. J. Laski, A Grammar of Politics, p. 413.
 - 7 A. de Tocqueville, Democracy in America, p. 57.
 - 8 A. B. Hall, Popular Government (New York, 1921), p. 1.
 - 9 L. A. Lowell, Public Opinion and Popular Government, pp. 14-15.
 - 10 Dicey's view is cited by L. A. Lowell, The Government of England, I, 438.
 - 11 Bryce, Modern Democracies, p. 119.
 - 12 Lowell, Government of England, I, 439.
 - 13 Hall, Popular Government, p. 17.
 - 14 W. I. Jennings, Cabinet Government, p. 385.
 - 15 Ibid., pp. 15-16.
 - 16 A. V. Dicey, An Introduction to the Study of the Law of the Constitution, p. 293.
 - 17 H. S. Maine, Popular Government, pp. 22-23.
 - 18 J. S. Mill, Utilitarianism, Liberty & Representative Government, pp. 219-20.
 - 19 Bryce, Modern Democracies, p. 190.
 - 20 Chien, Government and Politics, pp. 78-79.

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